THE NATIVE STATES OF INDIA

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THE NATIVE STATES OF INDIA

BY

SIR WILLIAM LEE-WARNER

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NOTE

In this second edition of *The Protected Princes of India* I have altered the title to one of more neutral tint. No part of the complicated task entrusted to the British Government in India demands more patience and tact than that of securing the co-operation of the Native states in promoting the moral and material welfare of the Indian Empire. The ruling chiefs are sensitive and conservative; they take a deep interest in the controversies to which such phrases as suzerainty, subordinate alliance, independence and dependence have given rise; and they realise that the general adoption of any title may give countenance to views which through the force of public opinion may direct the future conduct of the British authorities towards them. It is through our habitual bearing with others that we build up relations either of confidence or reserve. I have attempted to delineate the outline of British intercourse with states which I regard as semi-sovereign, but there is no object to be gained by pinning my colours to the outside of the volume. In my first attempt I hoped

that the indisputable fact of protection would give rise to no misconception or protest, but the phrase was taken by more than one Reviewer as a text for a sermon of warning to ruling chiefs that they "must keep pace with the rulers of British India." I have therefore adopted a title which is familiar to all and conveys no suggestion of any policy.

I have endeavoured to profit by the remarks of my critics, and to turn to account important decisions of the Privy Council which have been pronounced since the first edition was published. But while I have revised the whole book and in particular the chapter on foreign jurisdiction, I have not altered the arrangement of its sections, and I have brought the work down to the present time without unnecessary alterations or additions to its contents.

PREFACE

The design of these chapters is to bring together in one view, from sources of information which, if not generally known, are yet accessible to the public, a short account of India under Home Rule. The number of Native states included in the Indian Empire is reckoned at 693 in the latest edition of the *Imperial Gazetteer of India*, but this calculation places the territory of Nepal which is independent in matters of internal administration, and the Shan states of Burma which might be classed as part of British India, in the same category. Such a treatment may be justified by geographical considerations, but it is open to objection on other grounds. This sketch is mainly concerned with the more limited area, computed at 630,068 square miles, of the internal principalities and chiefships which lie within the recognised boundaries of British India, exclusive of Baluchistan, Nepal, and the Shan states, being inhabited by a population of about 62,650,000 persons. Why was this vast tract of territory left above the tide of British conquest as it rose and submerged

the 1,098,000 square miles which represent India under the King Emperor? How did the country princes survive the shock of a succession of policies that seem to be so dissimilar? Can any logical sequence be traced in the conduct of British intercourse with the Company's allies through its various phases of reciprocal alliance with a favoured few, of a general protectorate based on subordinate isolation, and now of an honourable union? What events gave to the Treaty map its present shape? What are the rights and what the obligations of the protected sovereigns, and how does the price which they pay for the substantial benefits of partnership compare with the cost at which greater nations have entered into "firm leagues of friendship" for their common defence? If any one is interested in seeking a reply to these questions, he will find that neither text-books on International Law, nor histories of India, readily furnish the requisite information. That Clive carved out the Province of Bengal by conquest, that Lord Wellesley added Madras and the North-western Provinces partly by treaty and partly by force, that Lord Hastings created the Presidency of Bombay, and that Lord Dalhousie transferred the Central Provinces, Oudh, and the Punjab from their Native princes to British possession, is the story unfolded by the historian of India; but his interest in the country princes seems to come to an abrupt end when swords are no longer crossed with

them, and the responsibility for honest and orderly government shifted to their shoulders. No one need depreciate the biographies of India's rulers edited by Sir William Hunter, or the history written by Marshman; but the fact remains that a serious examination of Indian treaties was beyond the scope of their particular design.

The difficulties of the inquirer do not end here. He cannot turn over the pages of histories or Encyclopædias without being confused by their want of agreement as to the position of the Indian states in relation to the British Government. The late Sir George Campbell, in his *Modern India*, devotes more space than other writers to the discussion of British obligations to the protected Native Governments, and he arrives at the conclusion that "Nepal alone retains any remains of independence." Sir Richard Temple, in an article on India, published in *Chambers's Encyclopædia*, observed that "some are practically independent sovereigns." But when he proceeded to show that none of them can make war or alliances, and that the British Government "takes a paternal interest in the good government of the states," he materially detracted from the title conferred on them. Sir Travers Twiss allowed them no shred of independence, and classified them as "protected dependent states." Sir Lewis Tupper prefers to style them Feudatory states, but this popular phrase, however suitable for the petty states in the Central

Provinces, does not apply to states such as Hyderabad, Kolhapur, and Gwalior which entered into defensive alliances with the British Company. Sir George Chesney, in his *Indian Polity*, compared them to the mediatised principalities of Germany. Fresh ground was broken by Élisée Reclus in his *Géographie Universelle*. "Les princes vassaux" are, in his opinion, destined to become "une grande aristocratie comme celle des lords anglais." Dr. Westlake is the greatest living authority who practically adopts the same view. On the other hand Sir Henry Maine insisted on the fact that sovereignty is divisible, and that the chiefs of India are semi-sovereign. Austin ruled that "no Government can be styled with propriety half or imperfectly supreme." Parliament in 1861 and 1876 used the expression "princes and states in alliance with Her Majesty"; but in 1889 they were described, by Statute 52 and 53 Vic. cap. lxiii., as "under the suzerainty of Her Majesty." A few modern writers on International Law, conscious of the vast field of interest opened up by the states, but unable to treat them as "nations" or subjects of International Law, refer their readers to Sutherland's account, written in 1833, of six classes of states, and to an article in the *British and Foreign Review*, published in 1839. The former work holds a high rank in the scanty literature of the subject, but it dates from a time when the protectorate was not even rough-hewn, much less shaped into its present form.

The later article is open to the same criticism and to far more serious objections.

The inconsistent views as to the position of the Native states presented by these several classifications at least suggest that there is a mistake somewhere; and while the doctors disagree so hopelessly in their diagnosis, the public may well shrink from forming an opinion on the case. If all the states are dependent, some cannot be "practically independent." If their rulers resemble "les lords anglais," they are not even semi-sovereign states. Between the condition of subordinate alliance, and that of union with the British Government, there is more than a shade of difference; and mere feudatories hold an inferior position to junior partners in an Imperial scheme. Is it presumptuous to hold that some further help is needed to guide the general reader to a definite conclusion? It may be freely admitted that there are dangers in inconvenient precision and in premature inferences. There is no question that there is a paramount power in the British Crown, but perhaps its extent is wisely left undefined. There is a subordination in the Native States, but perhaps it is better understood and not explained. After the labours of a century and a half the British rulers of India have not entirely extricated themselves from the maze of complexities and anomalies which have retarded their progress in building up the Empire. The full stature of British dominion and ascendancy

cannot yet be measured. Under such circumstances, can any useful light be thrown on the questions propounded at the commencement of this Preface? It seems to me that they may be approached from two sides without prejudice, and without intrusion on the incalculable mysteries of statesmanship. A writer may trace the growth of ideas, follow up analogies, and when he has ventured upon an analysis of the rights and duties of the states, he may divert too serious attention by taking his reader an excursion into the fascinating dreamland of *Staatswissenschaft*. Or, again, avoiding the higher flights of philosophic inquiry, he may confine himself to the facts of history, the text of treaties, and the leading cases and decisions which have been advisedly published by Governments and Parliament for general information. The broad currents of Indian history, and of the evolution of the political system, will carry the inquirer towards some tolerably satisfactory conclusions as to the relations of the British rulers of India with the Native states. The engagements concluded by the Company, or by the King's Viceroys, with their neighbours will confirm, or correct, the impressions thus formed by a general study of the drift of events. The circumstances of bodies, and groups of states, in other countries and other times, and their attempts to adapt themselves to similar environments will throw side-lights on the various phases of Indian political history.

The latter is the course marked out for myself as promising the surest foothold in the task which I have undertaken. For this purpose I have relied upon sources of information accessible to every one, Indian histories, appeals decided by the Privy Council, reports presented to Parliament, and the able collection of treaties, engagements, and Sanads, compiled by the late Sir Charles Aitchison, which is revised from time to time by the Foreign Department of the Government of India. The reader must make generous allowance for the difficulties which the examination of a complex and delicate piece of machinery entails. He must also calculate the constant changes which new conditions and healthy progress are bringing about. The day has passed when the East could "bow low before the storm in patient deep disdain." The legions still thunder by, but Oriental society can never go back entirely to what it was. To-morrow will not be as yesterday; it is certain that the present century will witness alterations in the character of British relations with the Native states. It is well, therefore, to remember that the policy which has preserved the integrity of about 680 principalities in India has been justified by the loyalty of their rulers to the King, and by improved administration of the territories entrusted to them. This result has exceeded the most sanguine expectations of those who built up British Dominion in the East. It has afforded a striking object-lesson of good faith and

political sagacity. Methods which have attained such a success deserve the study of those who may have to control the changes that are yet to come, and a knowledge of them may lead to the observance of the golden rule laid down by the Poet Laureate of the last century—

> Regard gradation, lest the soul
> Of Discord race the rising wind.

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allies, the ordinary landmarks are wanting. There are no collections of political rules, and no authoritative treatises to guide the inquirer. These matters are, according to some opinions, best left alone as the mysteries of the trade. Others see in this branch of Indian history an interesting field of study, and moreover a safe road through which official Blue-Books can guide them. But whatever system there may be, it is only to be gathered up by a tedious examination of numerous leading cases. Moreover, the history of other nations, whether ancient or modern, may be searched in vain for any precedent of a similar achievement. The most cursory examination of the Native states brings to light a confusing variety in their size, their origin, and their development. In the first quarter of the nineteenth century they presented the appearance of a sea suddenly petrified while in a condition of stormy unrest and disquietude. Commissioned by the Company to cease from war and "make their subjects happy," their rulers, who had in many cases carved out principalities by the sword or by intrigue, found themselves beset with constitutional difficulties of great variety and complexity. In one state a foreign dynasty was not merely set over a subject population that differed from it in caste and religion, but it had to maintain its position against a claimant whose family had been ousted from power only a few years before the Company placed war and aggressions under their interdict. In another state a powerful nobility claimed jurisdictory rights which seemed to render the maintenance of the sovereign's authority impossible. Elsewhere, again, the subject population was composed of predatory gangs, or of soldiers who had suddenly lost their dishonest means of livelihood.

The legacies of difficulty which each native sovereign inherited from the past were so heterogeneous that no uniform system of treatment could have been applied to the whole group. The British authorities themselves were undecided as to the tie by which the protected states could best be united to them. Three distinct policies were tried, and each political problem which presented itself for solution needed the disentanglement of the knots with which former experiments had complicated it. Amidst all these impediments to the consolidation of a living union between the states and the paramount power, it is no matter for surprise that hitherto no fixed system of political management has been drawn out on paper by superior authority. In fact, although principles have been publicly enunciated and applied to particular cases of interference, no body of authoritative rules governs the relations which to-day subsist between the British Government and the semi-sovereign states in subordinate alliance and union with it.

A collection of principles is being accumulated.

§ 2. To some extent the absence of any definite interstatal law must be recognised as depriving the states united to the Indian Empire of the safeguard which all law or system provides. It obviously renders an inquiry into the action of the political department of the Indian Government more difficult than the examination, so frequently undertaken by historians, of the growth and progress of British administration in the provinces under our rule. But because the workings of the complex and delicate machinery which governs British intercourse with many hundreds of states are not exposed to public view in the debates of Legislative chambers, it need not be assumed that they are therefore resolved into the simple rule—

Hoc volo, sic jubeo, sit pro ratione voluntas.

(Sir George Campbell, in his history of *Modern India*, published in 1852, wrote on the subject of our political relations with the Indian chiefs: "There is no uniform system, and it is impossible to give any definite explanation of what things we do meddle with and what we do not.") Nine years later, Dr. Twiss, in his treatise on *The Rights of Nations in Time of Peace*, could give his readers no better idea of the political aims and acts of the British Government than that contained in volume viii. of the *British and Foreign Review*, published in 1839. In his contribution to that Review the writer expressed his conviction that the Company meant to annex the states, but history has so far given an emphatic contradiction to his prophecy. It would seem that both Sir George Campbell and the authority quoted by Dr. Twiss missed the usual landmarks which the historian of British India finds to guide him in picking his way through the maze of Indian history. But because there are no rules or regulations bearing the stamp of public authority for regulating beforehand the relations between the suzerain and the protected states of India in the complicated circumstances which may arise, it does not follow that a definite explanation of past policy, or of present intercourse, cannot be given. The records of Parliament and the Indian official Gazettes, during the past sixty years, contain the fullest public explanation of the motives of Government in particular cases, and interspersed amongst them will be found many declared principles of political action. (Thus, in the parliamentary papers relating to Manipur, a Despatch, dated the 5th of June 1891, is printed, in which the Viceroy in Council expresses himself to this effect)

"It is the right and duty of the British Government to settle successions in the subordinate Native states. Every succession must be recognised by the British Government, and no succession is valid until recognition has been given. This principle is fully understood and invariably observed." It is clear, therefore, from this example, to which many others might be added, that the Government of India has not hesitated to pronounce and apply its "principles"; and if it has hitherto and of necessity avoided the enunciation of any political law, or the authoritative collection of principles, its reserve is doubtless due to the sentiment once expressed by Mr. Phelps in the Behring Sea discussion. Speaking even of International regulation, which had long since acquired a title to the use of the word "law," Mr. Phelps contended that the best precedents have been established, "when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules." Experience has proved that as years roll on even the political commerce of equal nations with each other presents new and unprecedented problems; and when the circumstances and numbers of the protected states of India are taken into account, it may readily be assumed that any rules which aimed at precision, or, as Lord Lytton has termed it, "vulgar compactness," would be inadequate.

Contrast between the reign of law in British India and the rule of discretion in political dealings.

§ 3. In one sense the absence of such rules is an obstacle in the way of solid union with the Native states, since a clear determination of the relations of states, as well as of individuals, to each other obviates misunderstanding and collision. But it must not be forgotten that the introduction of Roman law into the protected states of the Republic was the precursor of annexation, nor that the Indian sovereigns value

above all other rights their guarantees against the intrusion of the laws of British India. The charge which some writers have brought against the Government of India for its unsystematic conduct of political affairs, indicates rather a difficulty which the British authorities have to encounter in maintaining the union than a defect in their policy. There is no analogy between the task of the British magistrate or collector in a Province of the empire, and that of the political officer who conducts relations with a Native state. In the territories subject to the King, the whole set of conditions favours the development of a system, because the various populations, however differentiated they may be by religion or race, are welded by a common law, and by subjection to a single judicial system, into one community. Nature has herself set statesmen a wise example—

> So careful of the type she seems,
> So careless of the single life.

The reign of law and system is often condemned as imposing a needless shackle upon the heaven-born administrator or the far-sighted reformer. But so long as the wheels of the Legislature run smoothly, there is no reason why the law or system should not keep abreast of the requirements of a progressive society. The individual officer who perceives the need for change, must indeed hold his hand until the law has removed its obstruction; but when it does so the whole country benefits by the change, and not merely the single district to which the activity of one officer is confined. The historian finds his task rendered easy by the process. He has simply to fix his eye on the action of the law-maker as progress is registered in new enactments, and he experiences

no sort of difficulty in ascertaining the reasons and objects of the new departure. It is thus obvious that the compensation balance, which prevents the reign of system in British India from becoming too rigid, is the capacity of the Legislature to advance or recede. But the tie which unites the Native states, various in their size and social conditions, with the British Government is not strengthened by law or by the support of any federal courts. No supreme assembly defines or registers changes in the character of their political intercourse. Such principles as have been declared have resulted from particular conflicts arising out of their own environment of circumstances, and they are not to be found collected together in any manual that bears the stamp of authority. The particular support which any one of the hundreds of states requires, or the vitality which it is possible to infuse into its internal administration, depends upon conditions peculiar to it. The sovereign is the state, and the hereditary as well as the personal qualifications for rule of each sovereign present every shade of difference. The sovereign's decree is the law. The judges are removable at his pleasure, and his executive officers are not amenable to the courts of law for their public acts. Only in Native states like Mysore, Baroda, or Kolhapur, which have long enjoyed administration by British officers during a minority or for other cause, do there exist any body of laws, and they are simply taken from the British Code, *mutatis mutandis*. The relations of each principality with the paramount power are conducted by a single representative of the British authority. Thus it appears that the personal factor, both within and without the state, overshadows the whole conduct of interstatal relations. Where such conditions

prevail, any rule prescribed by authority would require a multitude of reservations and provisoes before it could be enunciated as a general principle and embodied in an established system. It may be found that in course of time such an uniform advance will be registered in the moral and material progress of all the states as will enable Government to trace the outlines of a political system, and to give the Native chiefs the strength and support of an Indian political law. In the meanwhile, however, it must be admitted that the light upon the course of administration which is thrown by the proceedings of the Legislature in the provinces under British rule, is denied to the student of the states united to that rule. The charge brought by Sir George Campbell of the absence of definite explanation of interference is certainly not borne out by the facts. In all cases of serious interference the public have been taken into the confidence of the Government of India, and ample explanation of its actions has been afforded. But Sir George was justified in asserting that "there is no uniform system"; and the impossibility of establishing one under present circumstances is a real difficulty in maintaining the union of the states with their suzerain which must be accepted and overcome.

Rome failed to preserve Native rule.

§ 4. Another difficulty which deserves mention is the failure of history to supply any precedent or mark out any track for the political task which the British have undertaken in India. The story of Roman achievements offers many parallels, and not a few contrasts, to the general course of British rule in India. The Provincial administration of Rome, rich in lessons for the Indian official, lies beyond the scope of the present inquiry; but it may be hoped that history will not repeat itself in the breakdown which

it records of Roman attempts to maintain the independence, or even the treaty rights, of its allies. The main help which Roman history can afford to the Political agent is the lesson of warning, and not of example, taught by failure. Under the Republic there was much in the policy of the commonwealth towards the allied states which sounds familiar to Indian ears. When Clive deliberately recognised the independence of Oudh, in order that it might be a buffer-state between the Company's territories in Bengal and the Maratha-swept provinces of the tottering Mughal Empire beyond them, he repeated the action of Flamininus, who withdrew his troops from Corinth, and left[1] Greece free as a check on Macedon, and as a breakwater against invasion from the East. The same policy was continued when, after the fall of Perseus, Macedonia was preserved as a fetter on Thrace. But each barrier gave way in turn, and when Thrace itself was annexed, its ruling family was pensioned by Tiberius as the Sind Amirs were by Napier after 1842. The rewards of territory given to Rome's allies, such as to Rhodes, Pergamus, and the client state of Numidia, recall the divisions of the spoil between the Company and the Parties to the Treaty of offensive and defensive alliance against Tipu Sultan in 1790; whilst the terms imposed on Carthage in 202 B.C., and those on Philip of Macedon soon afterwards, which deprived the states of the right of waging wars or making alliances without the consent of Rome, remind one of the treaties negotiated

[1] The Company, when it abstained from annexation, was frequently assailed by its officers, whose arguments may be stated in words borrowed from Livy, book xxxiv. 48: "Id minime conveniens videbatur tyrannum reliquisse, non suae solum patriae gravem, sed omnibus circa civitatibus metuendum." The groans of the Punjab peasantry and the appeals of the Sardars against the aggressions of Ranjit Singh can find no better expression.

by Lord Wellesley and Lord Hastings. The phrase *civitas foederata* applied to Gades is the exact equivalent of the term "Treaty-Jagirs," which to-day distinguishes the Southern Maratha Country, the Satara, and the Nagpore Jagirdars, honoured with the receipt of Sanads of adoption, from other proprietors of estates in foreign territory to whom the Sanads were not given. Again, when a state like Mysore adopts the provisions of British law as applicable to its own conditions, it may be said in Latin terms *in eam legem fundus fieri*. But although in two directions, namely, their arrangements for imperial defence and for subordinate isolation, the Romans anticipated the Company in several measures, which in British India have not led to annexation, their love of fixed law and system proved fatal to the maintenance of Native rule. The taxation and disarmament of Macedonia, in 167 B.C., were compatible with its retention of sovereignty, but when once a Constitution was introduced, and when (as the phrase went, *leges datae*) the details of the administration of justice and the relations of the communities included in the state were defined by law, the separate existence of the allied State ceased, and the Roman province took its place. The process by which the change was effected was no doubt gradual, but the loss of independence became only a question of time when Roman colonies with their legal rights confirmed by a *lex*, a *plebiscitum*, or a *senatus consultum*, were planted in foreign territory, and to urban communities were conceded municipal rights. The intrusion of the Latin tongue, to which even the coinage of the Mauritanian kings bore testimony, drove one wedge into the indigenous system, but the Roman prefects and magistrates were the most potent instruments

of annexation. The statesmen of the time of Mountstuart Elphinstone were sound scholars, and in their constant declamations against the intrusion of British law into the Native states, they only applied a lesson taught by their Roman history. They forgot, however, in carrying their doctrine to the extreme limits of non-intervention, that India would soon come under the eye of a public opinion, which would not tolerate oppression and corruption.

Modern history supplies no precedent.

§ 5. Most valuable to the British would have been the experience of the States of America, had they shown a way to the preservation of the Indian states on their borders. But here again History failed to give Indian administrators a helpful object-lesson. In 1846, the Supreme Court of America rendered it impossible to preserve the indigenous organisations by ruling that, where a country occupied by Indian tribes was not included within the limits of one of the States, Congress might by law punish any offence committed therein, whether the offender was a white man or an Indian. The intrusion into any such areas of the regular jurisdiction of Congress obviously excluded Native rule. But it might be thought that, if the West gave the British no light to assist them in maintaining the country states, the East certainly did. Whence came the Native states which the British desired to uphold, and how did the Indian system treat dependent allies? Unfortunately the British arrived on the scene when nothing but disorder and the shadow of the Imperial rule at Delhi remained. The strongest powers with whom they came into contact were rebellious viceroys of Muhammadan provinces; the rest were generally upstarts. The policy of unconcern outside the ring-fence of their own territories which the Company deliberately followed at first, left

the ground clear for the Native method of dealing with the country princes. Accordingly in Central India each state carried on unceasing warfare with its neighbours, and the Marathas would have wiped the Rajput states out of the map if Lord Hastings had not amended his treaties with Gwalior and Indore, and thus removed the diplomatic obstacles which had prevented the extension of British protection to Rajputana. In the Punjab Ranjit Singh annexed every principality outside the Company's ring-fence, which was, fortunately for the Phulkian states of Jind, Nabha, and Patiala, and other chiefships in the Hill tracts, set back to the Sutlej. In the south of India, the Kolhapur state still includes some feudatory states, but they exist because of the British guarantee, and because, by the Treaty of Kolhapur, dated the 20th of October 1862, the residuary jurisdiction had been removed from the suzerain state and taken into the safe keeping of the British. In short, it must be confessed that amongst other forces, tending to the conclusion that the preservation of Native rule was an impracticable aim, was the failure of other nations and other times to supply a precedent for success in such an effort.

Intricate problem of dual jurisdiction.

§ 6. The lesson taught by Rome's failure was not thrown away on the East India Company. Although their engagements with the petty chiefs contained clauses enjoining attention to the happiness of their subjects and to the administration of justice, they solemnly undertook in their treaties with the larger states to have "no manner of concern with the Maharaja's subjects." At a later date, when experience proved that a close and constant intercourse with the states demanded some intervention by the British Government on behalf of its own subjects, and

some pressure upon their allies in the interests of judicial reform, the spirit of these non-interference clauses was carefully observed. It was explained that the Company had guaranteed the states against the intrusion of its own Courts of law, or against any extension of its ordinary jurisdiction beyond the territorial limits of the Company's possessions. But where, as the only means of avoiding annexation, interference and the intrusion of British jurisdiction were absolutely called for, the Courts which were created for the exercise of that jurisdiction were established by the Government in its executive capacity, and not by the legislative authorities of British India. This cardinal distinction may appear subtle, but it has been the corner-stone of the judicial system introduced into the Indian states. It can easily be understood how, in course of time, conflict and protest gathered round the administration of justice by the imperfect courts of the Native states. Although the Company planted no British colonies in the principalities, it necessarily established some of its cantonments in them for the purposes of common defence. To no urban communities in foreign territory were granted municipal rights, but trade and commerce attracted European merchants to certain centres, and for their control, no less than for their protection, British Courts became necessary. In this and other ways the need arose for the exercise of extra-territorial jurisdiction; and the device, by which law and justice have been provided for the benefit of British or protected subjects in the states, without recourse to the Roman system, and without any unnecessary intervention in the internal administration of their sovereigns, affords the most marked evidence of the desire to save the states from the "vortex of

annexation." The character of British Courts in foreign territory will receive attention in the twelfth chapter of this work. Here it is only necessary to notice the fact that some measure of judicial intervention was unavoidable, and therein lay one of the most formidable menaces to the maintenance of Native rule. For it seemed impossible to introduce British Courts into the states without driving in a wedge that must loosen the whole structure of the Native sovereignty. Such were the views of that eminent officer, Sir John Malcolm, who, in 1830, urged upon the Company the policy of "tolerating for a period what we deem misrule," and "not disturbing such communities with laws which they do not understand." But if the magnitude, position, and conditions of Native rule are examined, it will be seen that the British had no option but to regulate their jural as well as their other relations with states that were not only placed on their borders, but often enclosed within them.

The geographical position of the states.

§ 7. The *Statistical Abstract* tells us that the Indian Empire includes 1,097,901 square miles of British territory with 232,072,832 British subjects, and if we accept the boundaries of India as traced by geographers,[1] 824,283 square miles with a population of 68,210,660 are regarded by the law of India as foreign territory, inhabited by people who, in the absence of naturalisation, are not treated in India as British subjects. But the difficulty of welding together these two parts of the Empire into one political system cannot be appreciated without a closer examination of the geographical position of the states.

[1] For details the reader is referred to p. 103, Chapter III. vol. iv. of the *Imperial Gazetteer of India*. The *Statistical Abstract* gives 675,267 square miles with population 62,288,224.

A glance at the map of India shows that, excluding the frontier states of Kashmir, Baluchistan, Nepal, and Bhutan, there are five considerable blocks of foreign territory in the interior of the Empire. The Rajput states, under the Rajputana agency, forming a compact area of 128,918 square miles with a population of 9,841,765, stretching from the Punjab on the North to the northern division of Bombay in the South, and from Sind in the West to the United Provinces in the East, lie right across the line of communication between Bombay, which is the most important sea base of British rule, and the North-western Frontier, whence throughout her history danger has threatened the people of India. Adjoining them on the South-east lie their hereditary foes, the Maratha states of Gwalior and Indore, which with others under the Central India agency claim 8,510,317 subjects scattered over an area of 77,395 square miles. Leaving a narrow strip of British jurisdiction to connect the Western Presidency of Bombay both with the Central Provinces and Bengal beyond them, and with the Madras Presidency on the South, lie the extensive dominions (covering, exclusive of Berar, 82,698 square miles and containing over eleven millions of population) of our oldest ally the Muhammadan Nizam of Hyderabad. In the Southern Presidency, Mysore detaches 29,444 square miles and 5,539,399 souls from subjection to the British Presidency of Madras. Finally Baroda, and the neighbouring groups of states consolidated under the Kathiawar agency, fill a large space in the Gujarat province of the Bombay Presidency. But the enumeration of these five massive blocks of foreign jurisdiction, barring the road from one Province of the Empire to another, leaves out of notice a vast

number of smaller states engulfed in the Presidency of Bombay and in the Provinces of the Punjab, Bengal, Central Provinces, and to a smaller extent in Eastern Bengal and Assam. The Government of India directly controls the intercourse of its agents with nearly 180 separate states, two of which are nearly as large as Italy without Sicily and Sardinia. The Governor of Madras has relations with 5, and the Governor of Bombay with 354 separate rulers, some of whom are very petty—ruling states no larger than the Republics of Lubeck or Hamburgh, but very tenacious of their semi-sovereign rights. The Lieutenant-Governors of the Punjab, Bengal, and the United Provinces deal respectively with 34, 30, and 2 states; whilst the Chief Commissioners of the Central Provinces, and of Eastern Bengal and Assam, control 15 and 26, the latter number including 25 Khasi states which collectively cover only 3900 square miles. There remains the province of Burma which is usually credited with 52 states, but it is doubtful whether any but the five Karen states should be regarded as native states outside British India.

These bare statistics convey an inadequate idea of the difficulties which the recognition of so many foreign jurisdictions entails upon the administration of the neighbouring British territories. In the Bombay Presidency, for instance, there is hardly a single District outside Sind in which one or more *enclaves* of foreign territory do not abound. Even in the case of a solid block, such as the state of Hyderabad, the frontier is so irregular that several British villages are surrounded by the jurisdiction of the Nizam, and some of his villages lie in the heart of British territory. When the Company was engaged in its

war upon organised bands of plunderers and professional Thugs and poisoners, the asylum afforded by this break of gauge in the authority and jurisdiction of its officers afforded a very general argument against the maintenance of Native rule. Again, before the peace of India was secured, the military resources of some of the chiefs, who could not be trusted, more than once threatened a change of policy, and the attitude of the Gwalior state on the outbreak of the Pindari war materially affected the plan of campaign. Fear was not the only influence which ofttimes suggested annexation. The exemption of wealthy princes from any payment for the naval defence of a long coast-line exposed to foreign enemies and local pirates, or for the military protection of their frontiers, was repeatedly condemned as unjust to the British tax-payer. Thus, not without some show of reason, a change of policy was pressed upon the attention of successive Governor-Generals; and this much may be safely conceded, that one motive or another, whether intolerance of disorder beyond the border, or financial necessity, would under similar circumstances have tempted any Roman provincial Governor to attach the client states to Imperial rule.

Administrative difficulties connected with the union.

§ 8. It must not be supposed that the obstacles, which presented themselves to the Company's servants in the way of preserving the integrity of the Native sovereigns, have been wholly removed with the establishment of the King's authority. The policy, which was so honourably and wisely pursued throughout the last century, still involves difficulty and additional expenditure upon the British Governments. No doubt the principalities have long since ceased to be blast furnaces into which the stormy elements of Indian society are drawn, until, as in the Pindari

war, they sweep as a whirlwind upon the British districts. But they sometimes give shelter to those enemies of civilisation and order, who, descended from the criminal tribes and predatory castes of India, practise their infamous trade in the Native states, and seize every suitable opportunity of crossing the British line. The police administration of frontier districts consequently entails greater expenditure than that of districts in the interior, because the duties of guarding the frontier of a foreign state are so much heavier. The facilities afforded for the escape of criminals, in the intricate patchwork of jurisdictions which exist in the Presidency of Bombay, require special measures of prevention, and Courts of law are subjected to grave inconvenience from the difficulties of securing the attendance of parties or witnesses from villages where the King's writ does not run. The collectors of British revenue often experience the impossibility of excluding untaxed opium or illicit spirits from their Districts, when an open frontier interposes no barrier to the free commerce of their villages with a foreign state, into which the British Inspector cannot carry his authority or his law and regulations. Again, where the necessity arises for sanitary measures, the spread of cholera or small-pox is dangerously assisted by the absence of precautions, such as vaccination or drainage, in close proximity to British Cantonments or to the capital towns of British Districts. Every servant of the King in British India, who is zealous in the discharge of his duties, must constantly fret at the frustration of his well-laid plans owing to influences from across the border which he has no power to counteract. Indeed, as the moral progress of India under the King advances, it brings into clearer

light many inconveniences attendant upon the neighbourhood of Native administrations conducted in a different spirit from our own. Thus infanticide, suttee, and the burning of witches continued to be practised and honoured just over an imaginary border, long after their suppression within the territories governed by British law. The slaughter of kine, religious toleration, and social reforms, which have ceased to be burning questions in most parts of a British province, assume a different aspect in frontier tracts, where the public opinion of a neighbouring state and the prejudices of its sovereign remain heated upon the same subject. As an instance of the difficulty, may be cited the treatment accorded to Hindus who may change their religion. According to the laws observed in some states such converts lose all their civil rights, and even the custody of their infant children, whereas in British India, and even in British Cantonments established in the same states, a change of religion carries with it no loss of legal rights.

So long as such differences of legal systems are found to be working side by side across a mere geographical line, British principles of law and government are challenged and thwarted. On the other hand, it is only fair to remember, that to the ruler of a Native state who allows no freedom of the press or public discussion, who declines to subject his executive officers to the interference of law courts, and whose laws are not to be found recorded in any Code accessible to his people, the contact of British territory and British ideas must be even more inconvenient. But the fact remains that a dual system of Government in India, under the conditions which have been described, adds greatly

to the task of British administration; and in proportion as increased efforts are made to provide for the wants of a progressive society, so must the co-operation of the rulers of Native states become more essential to success. The official Gazettes of the Indian Governments bear testimony to the force of this remark; and, as an instance, attention may be drawn to the *Bombay Government Gazette* of the 31st of January 1889. On that date were published certain rules for regulating and limiting marriage expenses amongst the Lewa Kunbis, with a view to the extinction of the practice of infanticide which is prevalent in that community. The delayed publication of these rules in the district of Kaira was due to the need for securing the co-operation of the Government of Baroda, whose villages are interlaced with the British villages. It is no exaggeration to affirm that the wheels of the administrative machinery of British India would be locked if definite arrangements were not made with the Native states in every department of Government. Not only must the fugitive criminal be arrested, and breaches of the customs law be prevented, but the links of Imperial communication, by road or river, across intervening strips of foreign territory must be maintained; and, since direct interference in the internal affairs of our neighbours is to be avoided, the action of the British executive must not be paralysed by too great a persistence on the part of the King's allies in their divine right to govern as they please. If contact, happily, does not always produce friction, it calls for a constant display of tact and temper, and it is to the credit of British statesmanship that annexation has been avoided, and each difficulty as it has arisen been met with forbearance and sagacity.

§ 9. The rich variety in area, wealth, and geographical position of the Indian principalities, and the diversity of the circumstances which may call for a settlement, suggest the impossibility of committing to a body of rules or formulæ the principles of British relations with the Native states. Those relations are, as has been shown, in a state of constant growth and development. But a further argument against hasty generalisation is supplied by a consideration of the volcanic origin of many of the states, and of the special difficulties against which their several rulers have to contend. If the problems calling for an understanding between the paramount power and its subordinate allies could be classified and valued, and if a set of principles for the solution of each difficulty could be established, there would still remain an unknown quantity before the equation could be solved in each individual application of the principles. The personal disposition and the capacity of the rulers to give effect to their obligations are factors which must be taken into account. So, too, in the intercourse of independent nations, subject as they are to the so-called "rules" of International law, allowance has to be made for the relative strength or weakness of the powers in conflict. A demand, just in itself, may produce injustice, if enforced at a particular crisis, and "right too rigid hardens into wrong." The penalty which one injured nation might properly exact from another would, in the case of a third nation, prove of crushing severity. In the dealings of the British Government with its numerous protected allies in India, the personal equation defies complete solution. If it be true that aptitudes and tendencies have their origin in the past, we must look to the starting-point of the British connexion

Personal difficulties of the Native sovereigns.

with the country princes in order to ascertain what were the qualifications, and whether the qualifications were tolerably equal, of those whom the Company either invited or permitted to wear the crown. A glance suffices to show that the allowance, which must be made for the difficulties of governing and of regulating their internal policy in conformity to the advice of the British agent, varies very materially. Public opinion reasonably dwells on the fact that the task of British rule in India is increased by the accident that it is a foreign rule, and it insists on the importance of selecting with care all who are to bear office in the land from the Viceroy to the assistant Collector. Yet British officers thus carefully chosen and trained for the discharge of their duties, are controlled by administrative regulations and a well-prepared body of law. On the other hand, the "royal instruments of British power," as the Company's officers described the Rajas and Nawabs, commenced their rule under every personal disadvantage, and in one respect only was a single feature common to all. The power of every one, from the greatest to the pettiest, was absolute within the sphere of his authority, and hardly one of them had received any education. But, in other respects, their positions bore no analogy to each other. Some were foreigners, ruling over a people whose religion differed from that of the reigning family. Some could claim the formal recognition of the Emperor of Delhi, whilst others had rebelled from Imperial control and had ousted by force of arms more lawful claimants. In one territory, as in Kutch, the nobles were powerful, whilst elsewhere, as in parts of Central India, civil war had reduced the whole of society to one low level of helpless poverty. Here a resolute adventurer had sprung into power, and

purchased peace by bribing his adherents with grants of land or exemptions from taxation; there a Rajput, claiming descent from the ancient King of Ajudhia and sovereignty through sixteen centuries, found himself crushed between the Marathas and the Muhammadans, and degraded by the defection of his feudatories. It needed no political biologist to predict that infinite patience, and the lapse of many generations of settled order, would be required before any fixed system could be applied to sovereignties tossed up from such a vortex of disturbance. The close of the past century witnessed indeed a general subsidence of the volcanic forces that raised above the surface of Indian society so many Native states at its commencement; but many years must yet elapse before the paramount power can ignore the heterogeneous elements with which it has to deal, or attempt to apply one uniform rule in its treatment of them.

Examples of legacies of disorder.

§ 10. The tendency to generalisation and to the application of "established" principles to wholly differing states of society is so strong that it seems to be convenient at this point to illustrate by examples some of the various conditions under which the Native sovereigns commenced their careers as rulers, and the consequences of such variety. The Nizams of Hyderabad are fortunate in claiming descent from the able soldier whom the Emperor of Delhi chose as the Viceroy of the Deccan in 1713; and the active part which this important state subsequently played in the history of India has produced a succession of distinguished ministers, entitling it to a position in the first rank of Native states. Older far was the title to rule of the Rajput dynasties of Udaipur and Jodhpur: but their power, which ought to have

proved most acceptable to Hindu subjects, was well-nigh broken when they were called upon to resume authority under British protection. The legacies of disorder thus left to these allies of the Company proved for many years a source of conflict between them and their British protectors. The reclamation of the lawless Meenas and Mhairs, the appeal to arms of the nobles in 1827 against the tyranny of their Maharaja, Man Singh, the rekindling of smouldering disputes with them in 1868, and finally, the outbreak of disturbances which occurred on the frontier of Sirohi in 1871, reveal a succession of troubles befalling the Jodhpur state which can all be traced to the starting-point of its enfeebled authority on its first contact with the Company's rule. The history of Gwalior, up to the mutiny, affords a different instance of a legacy of turbulence and disorder. The dynasty of Jodhpur was founded in the fifteenth century, and the difficulties described above were the result of internal disputes as to the succession, which led to factions of the nobles and their appeals to foreign help. But the Gwalior disturbances owed their origin to another cause. Maharaja Sindhia, who organised his adherents into a standing army under the Savoyard De Boigne, the Frenchman Pierre Cuillier, known to history as Perron, and other European officers, while he chose to profess a nominal allegiance to the Peshwa, was disturbed by no fear of his nobles and by no inability to restrain any tribe or class of his subjects. His rule, if modern, was at least vigorous. The source of conflict with the British power in his case was not his weakness as sovereign over the state of Gwalior but his strength. Madhavji Sindhia and his successor, Daulat Rao, had won and held rule by the sword. Their new *rôle* was laid

down in the Treaty of 1804 as the "faithful fulfilment of the Treaty of peace." Their swords were to be beaten into ploughshares. They were to resist the temptation to annex the territories of their Rajput neighbours, as well as to refrain from invading the Company's possessions. Their subjects, however, consisted mainly of fighting peasants, or tribes of professional robbers, whose occupation was destroyed by the establishment of the *Pax Britannica*. These elements of disorder were henceforth to settle down under the rule of a Sindhia into a peaceful state of Gwalior, a prospect which neither the French officers of the army, nor the inclination of the sovereign, nor the temper of his subjects approved. Conflict between the paramonnt power and its protected ally was inevitable, and the solution which averted annexation from Jodhpur would not have met the case of Gwalior. So it happened that, from the year 1781, when Col. Muir withdrew his force and Sindhia entered into a treaty to remain neutral, until Gwalior was taken by Sir Hugh Rose's force in 1858 and the Maharaja reinstated in power, the history of British relations was one of constant military interference and chastisement of the Darbar's troops. Yet with marvellous moderation the Company never superseded the Native dynasty. The actors came and went; the brilliant soldier Madhavji, the headstrong Daulat Rao, the weak Jankoji, and the loyal Jayaji succeeded each other in power; but the annals of each reign repeat the same scenes of disturbance and mutiny. The lessons taught to the Gwalior soldier-citizens at Aligarh, Delhi, Assaye, Laswari, and elsewhere, were repeated at Maharajpur and Panniar; but not until after the suppression of the mutiny of 1857 were the fires of disorder, which had smouldered since the Pindari

war, finally extinguished. If the student of history is at times puzzled by the moderation or apparent weakness shown by the Company in its dealings with Gwalior, the legacy of past disorder explains alike the difficulties of the Sindhias and the forbearance displayed by their protectors.

Sindhia was not merely a Maratha ruling over Marathas, but his soldierly qualities entitled him to their respect. In other states, the Company's officers were less fortunate, when their policy of consolidating the existing *status quo* brought to hand unworthy instruments of rule. It was a fine irony of fate which caused a British General in 1817 to encounter the famous robber Amir Khan when actually engaged in the siege of a Jaipur fort, and to confirm his title to the state of Tonk. The Viceroy, who in 1867 deposed his grandson for instigating the murder of the uncle of the Chief of Lawa, recognised no doubt the hereditary taint of lawlessness and dealt leniently with the state. Amir Khan, however, and his brother-in-law the Chief of Jaora, were more qualified to rule than the Mekrani adventurer who established himself at Ali Rajpur, or the Persian tax-gatherer whom the collapse of the Muhammadan authority at Ahmedabad left founder of a dynasty at Radhanpur. Most strange was the freak of fortune which imposed upon a civilised power the task of recognising the authority of the Bhil Rajas in Khandesh, or the right of the Gond rulers of Khairagarh to apply aboriginal methods to the government of their mountain fastnesses. It was inevitable that the experiment should require a more active interference by the protecting power in order to suppress the practices of witch-killing or human sacrifice. Thus it was that the Chindwara

Jagirdars were required to subscribe in 1821 to the following engagement negotiated between them and the Maratha Government by British officers:—"Without the orders of the Sarkar, I will take no human life, and take fines for offences committed only according to custom, and not improperly. I will give no widow to any one against her consent." In short, the recognition by the Company of the *status quo*, and their resolute policy of avoiding annexation, and of evolving the best type of native Government out of the disorder which they found around them, brought the British power and the British sentiment of fidelity to engagements face to face with the most perplexing problems. Their guarantee made them partners to the *damnosa haereditas* of the past with allies who often had neither experience of orderly government nor title to the obedience of the population over whom they found themselves called on to rule.

The permanency of the union.

§ 11. The types of forces making against the solid union of the Native chiefs with a civilised Government which have been enumerated might be indefinitely multiplied. But they will at least serve to illustrate the complex and difficult nature of the task which the British Government has undertaken in India, namely of preserving to its allies their semi-sovereign powers, and yet leading them to use their authority for the good of their principalities and for the common welfare of the whole Empire into which they have been admitted. If it is creditable to the Company and the Crown that the nineteenth century closed with the survival of so many states; it is also no small honour to the native chiefs that from such a beginning and with so many drawbacks they have rendered an alliance possible. In 1832 Sir John

Malcolm testified to "the general impression that our sovereignty is incompatible with the maintenance of Native Princes and Chiefs." Yet the fears which racked the minds of the Company's officers and their allies up to the outbreak of the mutiny are now out of date. It is no longer doubted that the preservation of the Native states is as much within the design and care of the King's officers as the maintenance of the British rule in the territories annexed to the Empire. Although no system of Indian Political law can yet be appealed to by the sovereigns of India, the gracious Proclamations of 1858 and 1908 and the object-lessons afforded by the treatment of Mysore, Baroda, and Manipur justify full confidence in the earnest desire, and also in the ability, of the British Government to uphold the union. Not without many experiments and several failures have the principles of the subsisting union been worked out. The theory of the personal responsibility of rulers, emphasised in the three cases just mentioned, stands far apart from the principle of non-intervention which Lord Cornwallis tried to maintain. The idea of a living union is equally far removed from the isolation which Lord Hastings laboured to accomplish, and which was necessarily a prelude to the later policy of co-operation and union. If the task was novel and difficult, it must be admitted that it has been accomplished. For, by one device or another, the map of British India is to-day studded with principalities in subordinate alliance with the paramount and protecting power, and it is the declared object of the Imperial Government that they should grow with the growth of the British territories and strengthen with their strength. Surface currents may for a time submerge a Native state, but the tide recedes, and so

long as India under the British survives the shocks of rebellion or invasion, the preservation of the states under their own rulers and the permanency of their union and friendship with the suzerain power may be assured.

CHAPTER II

THE TREATY MAP OF INDIA

Sources of political rules.

§ 12. THE sources from which the rules or principles that govern British relations with the Native states can be drawn, are first of all the Treaties, Engagements, and Sanads, entered into with them; secondly, the decisions passed from time to time by the paramount power in matters of succession, intervention, or of dispute with their rulers; and thirdly, the custom or usage, constantly adapting itself to the growth of society, which may be observed in their intercourse. Each of these factors acts and reacts upon the others with which it is intimately connected. Express conventions amongst contracting parties must always command a solemn respect, although it is important, at the very outset, to observe that they are subject to the fretting action of consuetudinary law. The decisions of British Courts of Law interpret and affect the provisions of Acts of Parliament; and by a similar process the judgments of the British Government upon issues raised by its dealings with the Native states test the treaties by the touchstone of practical application. Again, although a treaty, like any other contract, cannot strictly bind a state which is not a signatory, a series of treaties concluded with several states in a similar position at different

epochs of time, embodying as the necessity arose principles applicable to the conduct of one out of a group of states towards its protector in a given set of circumstances, will necessarily affect other states, members of the same family, when they find themselves in the same predicament. The Native states of India, although placed by treaty in a position of subordinate isolation, and excluded from direct negotiation or corporate action with other states, have derived the greatest benefit from the application to each one of them of the broad and generous principles which guide the paramount power in its general relations to the mass of them. This is particularly the case with the petty chiefs, who have shared the consideration shown, and enjoyed most of the privileges accorded, to the more powerful members of the family.

§ 13. What is a Native state? That is a question to which some answer must be supplied at the very threshold of any inquiry into the rights and duties annexed to that status by writing or usage. A Native state is a political community, occupying a territory in India of defined boundaries, and subject to a common and responsible ruler who has actually enjoyed and exercised, as belonging to him in his own right duly recognised by the supreme authority of the British Government, any of the functions and attributes of internal sovereignty. The indivisibility of sovereignty, on which Austin insists, does not belong to the Indian system of sovereign states. As the late Sir Henry Maine wrote: "Sovereignty is a term which in International law indicates a well-ascertained assemblage of separate powers or privileges. The rights, which form part of the aggregate, are specifically named by the publicists, Definition of Native state.

who distinguish them as the right to make war or peace, the right to administer civil and criminal justice, the right to legislate, and so forth. A sovereign who possesses the whole of these rights is called an independent sovereign, but there is not, nor has there ever been, in International laws anything to prevent some of these rights being lodged with one possessor and some with another. Sovereignty has always been regarded as divisible. Part of the sovereignty over those demi-sovereign states in Germany, which were put an end to by the Confederacy of the Rhine, resided with the Emperor of Germany; part belonged to the states themselves. So also a portion of the sovereignty over the states which make up the German Confederation belongs to that Confederation. Again, the relation of the Swiss Cantons to the federal power was, until the events of 1847 and 1848, a relation of imperfect sovereignty, and though at this moment" (1865) "it is dangerous to speak of the North American States, the relation of the several members of the Union to the Federal authority was, until recently, supposed to be of the same nature. In fact Europe was at one time full of imperfectly sovereign states, although the current of events has for centuries set towards their aggregation into large independent monarchies." Whether, then, in the case of an Indian community, claiming to be treated as a Native state, these divisible powers of sovereignty vest in one chief or are distributed, and, if distributed, in what mode and to what degree they are distributed, are questions of fact to be decided by the evidence of treaties or by that of usage; and usage is the more cogent of the two. No Native state in the interior of India enjoys the full attributes of complete external and internal sovereignty, since to

none is left either the power of declaring war or peace, or the right of negotiating agreements with other states; but (the sovereignty of Native states is shared between the British Government and the Chiefs in varying degrees. Some states enjoy a substantial immunity from interference in nearly all functions of internal administration, while others are under such control that the Native sovereignty is almost completely destroyed.) But communities whose rulers ordinarily exercise any, even the smallest, degree of internal sovereign authority, are classified in India as Native states and excluded from the territories subject to the King's law.

§ 14. Occasionally a conflict arises between the evidence of writing and the evidence of usage, and in such cases superior weight is given to the latter, whenever the final decision rests with the executive Government. The Privy Council in the Bhavnagar case, Dámodhar Gordhan *v.* Deoram Kanji (*Indian Law Reports*, 1 Bombay, 367), and the High Court of Judicature of Bombay, in Triccam Panachand *v.* Bombay Baroda, and Central India Railway Company (*Indian Law Reports*, 9 Bombay, 244), have upheld the principle that judicial inquiry cannot be denied to parties who challenge the most formal Notifications issued by Government. Whether any place or places were "in the Indian territories now under the dominion of Her Majesty" within which Parliament in 1861, by Statute 24 and 25 Vic. cap. lxvii., provided for legislation, is a question of fact, which parties interested have a right to submit to the decision of the highest judicial authority. In the case of the *tributary Mahals* this test was applied, and the High Court of Calcutta (*Indian Law Reports*, 7 Calcutta, 523) ruled that these were part of British

Evidence of usage is the most cogent.

India, but that legislation generally did not extend to them without a special order of Government. But for the most part the status of Native states and Native rulers, as recognised by the Foreign Department of the Government of India, has been accepted without question, and the recognition accorded by that office has been based upon the evidence of long usage even more than upon that of treaties. It will, however, save mistakes to bear in mind the fact that many of the chiefs of Native states also possess villages, which, with the districts in which they lie, have been formally annexed to British India. They thus occupy a dual position, as, for instance, the Chief of Umetha, in the Mahi Kanta Agency, who, since 1817, has been a British Zemindar or proprietor in respect of Umetha and four other villages, whilst in respect of seven others he is a petty sovereign of an estate attached to the Political agency of the Mahi Kanta.

Temporary loss of jurisdiction need not affect status.

§ 15. So powerful is the weight given to evidence of custom, that it is almost a maxim, "Once a Native state, always a Native state." The solidarity of class-feeling in India, and the jealous watchfulness with which the chiefs regard the action of the paramount power in its dealings with any of their order, make it expedient to preserve the status of a Native state, even where the representative of the family, whose members formerly exercised rule over the territory, is no longer capable of exercising any of the functions of sovereignty. The bare possibility that in the future the fragments of the divided state may again be united under a chief qualified to rule over it, affords a reason for treating the parts of it as foreign territory. Such a condition of affairs has arisen in what are called *Thana circles* in the Bombay

Presidency, of which the Mahi Kanta Agency affords a notable example. In this group of Native states, which covers 3125 square miles, situated in the northern division of the Bombay Presidency, there is only one chief, the Raja of Idar, who ranks as a sovereign of the first class. The remaining chiefs, or Thakores, were on the eve of the British conquest subject to the annual invasion of the Gaikwar's Mulkgiri army, which took the field to collect by force the tribute claimed by Baroda after the expulsion of Muhammadan rule in 1753. The piteous appeals of the Thakores and their raiats induced the Company to depute Colonel Ballantyne in 1811 with the Mulkgiri force to make a decennial settlement of the Gaikwar's claims. Eventually, in 1820, the exclusive management of the Gaikwar's tributaries was transferred to the British Government, under an engagement dictated by Mountstuart Elphinstone to the Maharaja of Baroda, better known as the Gaikwar; and, as shown in the celebrated "Joint Report," dated the 2nd of May 1865, the whole of the tributary chiefs, communities, and villages were transferred in the lump to the Company's control, according to the lists of the Mulkgiri officers. Thus a great variety of persons and corporate bodies came at once to be treated as states by the British Government, whereas their neighbours, who were left under the Baroda Administration, and whose status presented few points of difference, have lost their sovereignty and fallen under the jurisdiction of the ordinary Courts of Baroda. As time proceeded, the local law of inheritance, which favoured an equal division of the petty chief's estate on his decease, frittered away the property and the sovereign's attributes. One small chiefship, for instance, named Magona, was

partitioned into twelve shares, and disputes arose as to the limits of the jurisdiction of each shareholder. The heads of the divided families were steeped in debt and absolutely uneducated. By means of judicial fines they sought to supplement their scanty revenues, and the energies of their ill-paid police were devoted to the augmentation of the judicial receipts. It was found too expensive to maintain prisons, and the most serious crimes, including murder, were punished only with fine. The paramount power was therefore forced to interfere, not merely because justice miscarried, but because the jurisdiction of the petty Patels and Thakurdars was contested, and there was no one on the spot who could be trusted to dispense justice in the divided estates. The remedy applied is instructive. The estates, which had formerly formed parts of a Native state, were not brought under the dominion of the Company. By long usage they had been treated as Native states outside the jurisdiction of British Courts, and beyond the reach of the Indian Legislature. It was decided that they should remain so, even though it was found necessary to entrust the powers and privileges of sovereignty to an agent of the British Government acting on behalf of the chief, who might have ruled if his territory had not been reduced to fragments by this process of partition and decay.

Of the many hundreds of existing chieftains who claimed to be treated as ruling chiefs because their ancestors, not exceeding one hundred, had signed the security bonds of 1811-1812, twenty-eight have remained capable of exercising jurisdiction, the most cherished and essential of the attributes of sovereignty. These chiefs accordingly govern their own territories in the present day, and their estates are classed as

petty states. The rest of the once semi-sovereign communities are grouped under one or more Political divisions, called Thana circles, over each of which a Thanadar with magisterial and judicial powers presides. All of the descendants of the original chiefs conduct the revenue administration of their patches of territory on their own system, and their holdings are treated as beyond the jurisdiction of British India. But their jurisdictory powers vest for them, and by their tacit assent, in the Political officers of Government. The Thanadars, and the British agent who supervises them, are subject to the executive orders of the British Government, but not to the jurisdiction of the Courts of law established in British India. The Native state thus subsists and is not converted into a British province; and the remedy applied avoids the precedent set by Rome of annexation under the plea of misrule. That which has happened in the Mahi Kanta has occurred also in Kathiawar and in the Rewa Kanta, where many Talukdars who have lost their jurisdiction retain the status of Native chiefs.

§ 16. From this digression as to the definition and vitality of a Native state, it is convenient to pass to the examination of British treaties with the King's allies. Although these solemn documents are not exempt from the recognised laws and necessities of interpretation, and cannot be dissevered from the environment of circumstances, which alter from time to time, and fix the mutual relations of both parties, they have acquired the most formal recognition of Parliament. The position of "Trustees for the Crown of the United Kingdom" was assigned to the Company in 1833, by Statute 3 and 4 William IV. cap. lxxxv.; and, when the trust-administration of

The *corpus* of Indian treaties.

India was determined or ended by the Act of 1858, Statute 21 and 22 Vic. cap. cvi., § 67 enacted that "all treaties made by the said Company shall be binding on Her Majesty." The Native states, no less than the territories in the possession or under the Government of the East India Company, thus passed into the safe keeping of the British nation. A complete collection of Treaties, Engagements, and Sanads was published in 1812, and again in 1845. The latter was reprinted by order of Parliament in 1853, and the well-known edition of them compiled by Sir Charles Aitchison, with his able summaries of historic events, is periodically revised and corrected up to date by the Government of India. The phrases "treaties and engagements" are sufficiently distinct, but the Indian term "Sanad" requires explanation. It may be translated as a diploma, patent, or deed of grant by a sovereign of an office, privilege, or right. In fact, in Lord Canning's Sanads of adoption the word grant replaces the more usual term Sanad in the proviso attached to the grant of the right of adoption.

In common parlance, the expression "Indian treaties" covers these three varieties of agreements or compacts. Even viewed by themselves, without reference to the decisions based on them or to the accretions of the customary law, the treaties with the Native states must be read as a whole. Too much stress cannot well be laid on this proposition. In their dealings with a multitude of states, forming one group or family, neither the Company nor the King's officers have added to the collection without absolute necessity. Whenever a general principle called for the conclusion of a fresh agreement with a single state whose attitude compelled the British authority to reduce its relations

to writing, the occasion was taken not to revise the whole body of treaties but to declare the principle and its reasons in a single treaty. The circumstances of each state are, as has already been shown, very various. In its dealings with one state the paramount power has declared its military policy, in another case its obligations to the law of humanity, and in others its claims to co-operation or its rights of interference. In only one instance, namely, the instrument of transfer given by Lord Ripon to Mysore in 1881, has even an attempt been made to embody all obligations in a single document. In all other cases, additions have merely been engrafted upon previous compacts, in the position which was most appropriate to them, and at the time when the necessity for amendment or addition actually arose. The student who is familiar with the general outlines of Indian history would thus properly look to the Treaties of Gwalior for a view of the military obligations not only of that but of other Native princes. In the treaty concluded with Maharaja Jayaji Rao Sindhia by Lord Ellenborough on the 13th of January 1844, article 6 enunciated a principle of general application: "Whereas the British Government is bound by Treaty to protect the person of His Highness the Maharaja, his heirs, and successors, and to protect his dominions from foreign invasion, and to quell serious disturbances therein, and the army now maintained by His Highness is of unnecessary amount, embarrassing to His Highness's Government and the cause of disquietude to neighbouring states, it is therefore further agreed that the military force of all arms hereafter to be maintained by His Highness shall be," etc. The care taken in the recital of these conditions shows clearly that the Company chose the occasion of

their difference with the Gwalior state to lay down and publish a general principle for the conduct of their relations with all the Native states should similar circumstances arise elsewhere. There is nothing unjust in such a procedure. Students of international law know well that a constructive argument is frequently deduced from even the silence of a first-rate Power upon a capital occasion.

Far-reaching application must also be given to the obligations dispersed through Indian treaties against the "barbarous practice of impalement," the seizure of persons "on the plea of sorcery, witchcraft, or incantations," the "horrible trade of buying and selling slaves," or the "murder of female children." The language in which the British Government has intimated to particular states its abhorrence of practices which it has stigmatised as criminal, is addressed to one state, it is true, but it is equally applicable to all members of the Indian family of states. So, generally, the obligations of each state cannot be fully grasped without a study of the whole corpus or mass of treaties, engagements, and Sanads.

There is another reason why the position of any given state, as evidenced by the book of treaties, can only be understood by extending the view to the whole body of them. There are some states with which no treaties of any sort have been concluded; and yet, by long usage as well as in the spirit of Acts of Parliament, they are as much entitled to the protection of His Majesty as if their relations were fully expressed in writing, and not merely left to be inferred from the writings addressed to their fellows. Thus the ruler of Pudukkottai, with an area of 1101 square miles, has received the marked distinction of a Sanad of adoption signed by Lord Canning, which

confers upon him the right to adopt a successor under certain conditions, "so long as your house is loyal to the Crown and faithful to the conditions of the Treaties, grants, or engagements which record its obligations to the British Government." The Raja's ancestor obtained in 1806 a concession of land in perpetual lease, but for evidence of his status as a Native chief prior to 1862 he can appeal to no treaty or engagement with the British Government. In the same way, the only document which the Muhammadan ruler of Savanur, in the Bombay Presidency, can produce as his title-deed, is the Sanad of adoption issued to him by Sir John Lawrence in 1866. The delay in the issue of his Sanad was due to doubts as to whether Savanur could be described as a Treaty-Jagir,[1] *civitas foederata*, and the decision in its favour was based on the evidence of usage and the arguments of analogy.

Close connexion of history with the treaties.

§ 17. The treaties, grants, and engagements of the Indian chiefs must therefore be studied together as a whole. The parts of them which obviously concern only the individual state and its protector are easily identified; and if any doubt existed at the time as to the application of a general principle to a particular state, such doubts have been set at rest by the usage of nearly a century, and by the mutual relations established between the paramount power and its allies. It is equally important to study the treaties in connexion with the general framework of history. Lawyers hold that *conventio omnis intelligitur rebus sic stantibus.* Wheaton in his *International Law*, § 29, remarks that "the obligation of treaties, by whatever denomination they may be called, is founded not merely upon the contract itself, but upon those

[1] *Vide supra*, chap. i. section 4.

mutual relations between the two states which may have induced them to enter into certain engagements. Whether the treaty be termed real or personal, it will continue so long as those relations exist." The acts of statesmen are no more exempt than humanity itself from the law of nature, which distributes change over the whole of creation. The treaties and engagements of the Native states cannot be fully understood either without reference to the relations of the parties at the time of their conclusion, or without reference to the relations since established between them. As Wheaton observes: "The moment these relations cease to exist, by means of a change in the social organisation of one of the contracting parties, of such a nature and of such importance as would have prevented the other party from entering into the contract had he foreseen this change, the treaty ceases to be obligatory upon him." The resignation by the Peshwa of sovereignty in 1818, the trial of the Emperor of Delhi, the transfer of the Company's rule to the Crown, and the deposition of the late Gaikwar of Baroda, are historical events which affect Indian treaties and modify phrases of equality or reciprocity, just as the "War of Secession" adds to the Constitution of the United States the principle that the Union cannot be dissolved. The onward movement of mankind carries with it, as does that of a glacier in its progress through ages of time, all the accretions of the past, and constantly shifts their relations to the surrounding mass. The Treaty map of India was not filled in by one hand in a single generation; but as each Governor-General wrote in a state within the British protectorate, he either carried on or he reversed the policy of his predecessor. Sometimes he wiped out of the map of the protec-

torate a state already included. One Governor-General added much, another only rounded the corners of the ring-fence. The policy which guided the Company in the three well-marked periods of its map-making must be thoroughly understood by any one who seeks to ascertain what the relations of the parties were then, and what they have since become.

§ 18. Each period is the expression of an idea, which has left its mark as much on the form and language of the treaties as upon their extent and their objects. Up to the year 1813, which may be fixed as the closing year of the first period, the pressure of Parliament and the prudence of the Merchant Company operated in the direction of a policy of non-intervention. The Company was barely struggling for its existence, and it recoiled from the expense and the danger of extending its treaties of alliance and self-defence beyond the ring-fence of its own territorial acquisitions.

Three distinct periods in filling in the Treaty map.

In the next period, which lasted from 1814 to the Mutiny of 1857, larger schemes of empire dawned upon its horizon and dominated the policy of its Governor-Generals. The exclusion of any states from the protectorate was proved by experience to be both impolitic and cowardly. Empire was forced upon the British rulers of India, and the bitter fruits of a policy of leaving the states unprotected were gathered in the Pindari war, in the revival of schemes of conquest in the minds of the Maratha chiefs, and in the humiliation of the Rajput Houses. Surrounded on all sides by the country princes, the Company's officers saw that no alternative remained except annexation, which they wished to avoid, or a thorough political settlement of the empire step by step with the extension of their direct rule. Without order

on their frontier, peace in their own territories was impossible; and the only prospect of order amongst the Native states was to undertake arbitration in all their disputes with each other, and to deprive all alike of the right to make war, or to enter into any unauthorised conventions with each other. The policy adopted in this period was one of isolating the Native states, and subordinating them to the political ascendancy of the British Power. The expressions of "mutual alliance" and "reciprocal agreement" were exchanged for the phrases "subordinate alliance," "protection," and "subordinate co-operation." But whilst the states were deprived of all control over their external relations, the traditional policy of non-interference was still for a while preserved in their internal affairs. There the phrases of international law maintained their last stronghold, and it was deemed inconsistent with a sovereignty to introduce a foreign agency for effecting any reforms. No remedy for continued misrule was then known except a declaration of war, or, at a later date, annexation. These were the weapons of International law when sovereign states could not agree on a vital issue, and thus to the King of Oudh, who had broken his solemn treaties, Lord Dalhousie offered the alternative of war or virtual annexation.

Then the Mutiny occurred, and after its suppression a final change took place in the relations of the Native states with the paramount power. As Lord Canning expressed it, "the Crown of England stands forth the unquestioned ruler in all India." From that date prevention was regarded as better than punishment; guidance and correction preferable to war or annexation. If International law abhorred intervention in the internal management of an ill-

governed state, then it was necessary to adjust the spirit and the rules of that law to the necessities of the case. The main object in view was to preserve the Native principalities from annexation; and if the intervention of the British authorities was needed to save a protected principality from ruin, then it was better to abandon the principle of non-interference so dear to International lawyers, and so avoid more serious alterations in the map of India. These views prevailed, and the thoughts of statesmen turned from subordinate alliances to the best means of promoting a solid union between the territories of the Empire governed by the British and the states protected by His Majesty. A new set of engagements were concluded, which brought to light the common purpose of working hand in hand to extend railways, provide canals, and promote measures and works of public benefit.

The relations, which to-day subsist between the protected states and their protector, are the resultant of these three periods, and of these several ideas, namely, non-intervention, subordinate isolation, and union. The Treaty map, as drawn at the close of each period, reflects these three phases. Up to 1813 the allied states were few and vaguely defined. They were either within the Company's ring-fence or on its border. Lord Hastings not only added to the protectorate scores of states, but he broke up the large blocks of undefined foreign territory. His successors up to 1857 completed the process of addition to the list of allied states, while they transferred others to the territories of the Company. After 1857 the map required further alterations. A few more states disappeared, but others had grown larger. Nepal, for instance, regained territory lost in a former period.

But the chief addition to British rule was due to the acquisition of land for railways and canals, which were to benefit and unite all parts of the Empire. Thus the map records the variations and outcomes of policy. But any one who desires to understand what the treaties meant when they were written, and what changes in the relations of the parties have since occurred, must not be content with a glance at the map. He must follow, step by step, the course of historical events.

Direct responsibility of the supreme Government for treaties.

§ 19. The binding force of a formal treaty or compact between states is fully recognised by the Government of India, and consequently extreme care is used to attach to the highest authority in India exclusive responsibility for its execution. The Charter of Charles II., which in 1661 confirmed the Charter of 1600 given by Queen Elizabeth to "the Governor and Company of Merchants of London trading into the East Indies," empowered the Company to make peace or war with any Prince not Christian. Such a power necessarily involved a right of making treaties of peace or defensive alliances. When this Company was amalgamated with the "English Company," to which William III. granted a Charter in 1698, and when thus in 1709, by a series of Charters of Queen Anne, "the United Company of Merchants of England trading to the East Indies," otherwise known as "the Honourable East India Company," was formed, events soon developed which suggested to Parliament the necessity for asserting their control over the sovereignty exercised by the Indian authorities. Statute 13 Geo. III. cap. lxiii. § 9, required in 1772 that the "consent and approbation of the Governor-General and Council" should first be obtained for negotiating or concluding any treaty of

peace or other treaty with Indian princes and powers, "except in such cases of imminent necessity as would render it dangerous to postpone such treaties until the orders of the Governor-General and Council might arrive"; and the Governor-General was placed under a general obligation to report all transactions relating to the Government to the Court of Directors. Then followed the celebrated trial in Chancery of the suit brought by the Nawab of Arcot against the Company for an account of profits and rents derived from his territories between the years 1781 and 1785, under certain engagements. In January 1793, Lord Commissioner Eyre dismissed the Bill on the ground that it was a case of mutual treaty between persons acting in that instance as states independent of each other. The treaty, he held, was, as it were, a treaty between two sovereigns, "and consequently is not a subject of private municipal jurisdiction." In June of that year the provisions of Statute 33 Geo. III. cap. lii. § 42, which confirmed the title of the Company to their territorial acquisitions "without prejudice to the claims of the publick," restricted the powers of the supreme Government in India. It was then enacted that, "without the express command and authority" of the Court of Directors or the Secret Committee, the Governor-General in Council should not declare war, or enter into any treaty of war or guarantee except in certain specified cases; and the local Governments were forbidden to conclude any treaty (except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone such treaty) unless in pursuance of express orders from London or Calcutta. Later enactments, *e.g.* Statute 53 Geo. III. cap. clv. which saved from prejudice "the undoubted sovereignty of the Crown of

the United Kingdom of Great Britain and Ireland in and over the said" territorial acquisitions, maintained the responsibility of the highest controlling authority for the execution of treaties; and, as the natural outcome of the statutory obligations of the Viceroy, no negotiations tending to an agreement with a Native chief are permitted to be initiated by a local Government without the prior sanction of the Government of India. For the avoidance of subsequent dispute or misunderstanding, a few general rules have been prescribed in regard to the form and method of executing Indian treaties.

Formalities in the execution of treaties.

§ 20. It is a standing rule that only those transactions to which a fair degree of permanence attaches should be embodied in a treaty. Matters of detail, liable to subsequent alteration, are usually provided for by rules made under the authority of a clause in the treaty. The Native chief binds himself, his heirs, and successors; and his titles and decorations are recited in full, provided only that they have been recognised by the British Government. The authoritative version of every engagement or treaty is the English, and if a Vernacular edition of it is asked for it is supplied for convenience only. This precaution is justified by experience, inasmuch as tedious disputes have arisen from a conflict between the two versions of the Kutch treaty of guarantee to the Jareja nobility, and the Indian vernaculars are in many cases unable to convey the exact equivalent of an English phrase. An Indian treaty almost invariably runs in the name of the Governor-General and not of His Majesty, being headed by its title and object. The names of the contracting parties are recited, and the fact is plainly stated that the British officer executes on behalf of the Governor-General in Council or of the

British Government. After the recitation of these preliminaries follow the articles as already sanctioned by the Government of India in accordance with the understanding arrived at with the Native chief. Duplicate copies, or if the local Government requires a copy, triplicates of the treaty are engrossed upon parchment, and after signature by the parties concerned, they are transmitted to the Government of India for ratification by the Viceroy. One copy is then delivered to the state, and the other copies are recorded in the archives of the supreme and of the local Governments. If the obligations of an engagement are not dynastic but personal, being intended to bind a particular chief only, they are usually not embodied in a treaty drawn up on the lines just described, but conveyed in the form of a letter from the Governor or the Governor-General, as the case may be. The communication addressed by Lord Harris, Governor of Bombay, to the Nawab of Cambay after the disturbances which occurred in 1890, or the letter addressed by Lord Hardinge to the Maharaja of Kashmir, both of which have been published by the authority of Parliament, are instances of such communications. If the matter is one of less moment, the Political agent is authorised to make the required communication. When a state is re-granted, as in the case of Garhwal or Tehri conferred upon Bhowan Singh in 1859, the grant is conveyed in a Sanad.

§ 21. The care taken in the execution of these compacts affords some measure of the great respect paid to them. Although they must be read in connexion with their historical setting, that is to say, with the events and relations out of which they arose, and with the subsequent modifications of such relations, Leading dates of Indian treaties.

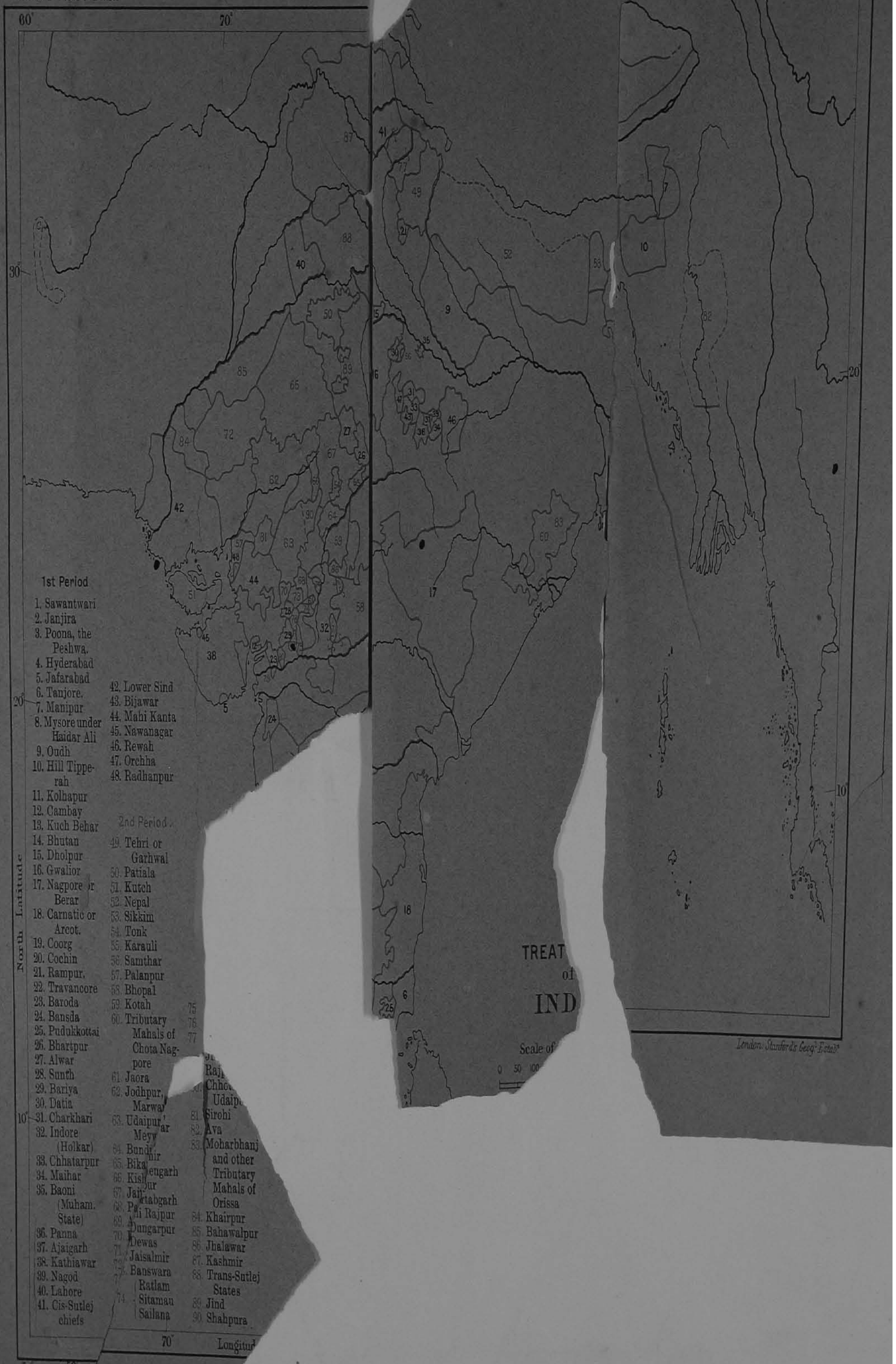
and although they are subject to the same rules of interpretation that are applied to legal instruments, yet they require the most generous construction of which the circumstances permit. Their validity has been solemnly recognised by Parliament, and they are surrounded with all the solemnity that full deliberation, formality, and the ratification of the representative of His Majesty can confer on them. In the statement given at the end of this chapter the states of the principal Indian sovereigns ruling in the interior of India who are entitled to a salute from British forts or batteries, are entered in the order in which they were finally written in on the map as allied or protected states. A few of the annexed states from which the British derived political powers are also shown; and whilst the Burmese and trans-Indian states, such as Kelat on the North-western frontier, are omitted, Nepal, which is not a protected state of the Indian group, is entered because through it the British Government acquired political ascendancy in Sikkim.

The date attributed to the admission of Nepal, 1816, will also serve to explain another principle on which the statement is constructed. The first treaty with Nepal, dated the 1st of March 1792, was exclusively a Commercial treaty, although it served as a "basis for concord." The next treaty, ratified by Lord Wellesley on the 30th of October 1801, was subsequently dissolved, and the treaty of 1815 was not ratified by the Darbar until 1816, which date is accordingly selected as the date of inclusion in the list of allies. The date of acceptance by the Native state, and not the date of ratification by the Governor-General or Governor, is entered in the statement, because the treaties operated from the former date.

In conclusion a word of caution is needed. The states are classified, for the purpose of this review, in the order of their final inclusion in the Treaty map, and the keynote of the treaty is given in the statement. But, for reasons which will appear in subsequent chapters, no classification of the rights and duties of states can be based either on the period in which the British connexion was first established, or on the circumstances under which they first entered into relations with the British Government. A state which fell to the British Government by conquest or cession, and was then recreated or regranted by the Company, is not on that account inferior to one which never came into British possession, and whose original relations with the British were formed on a footing of equality. From Tipu was wrested the principality of Coorg, which was then granted to the Raja, and after the victory of Buxar Oudh was conquered and recreated; yet both states were treated with as much consideration as Hyderabad or Indore.

The differentiation of states as allied, tributary, created, or protected is illusory. All are alike respected and protected. Nor can the duties of the states be classified by an exclusive analysis of their own treaties and engagements. The statement given below is merely intended to present to the view the list of the more important of the allied or protected states in the two great periods of contractual activity. It shows at a glance that, despite the active administration of Lord Wellesley from 1798 to 1805, nearly the whole of Rajputana and most of Central India, much of the Bombay Presidency including the greater part of Sind, and the Punjab beyond the Sutlej, remained unwritten on the Treaty map. The course of Lord Hastings' active career is marked by an

alliance with Nepal, the protection of the Hill states, and the addition to the Treaty map of the whole of the Rajputana Agency, and of numerous states in Bombay and Central India. Lord Auckland's and Lord Hardinge's contributions appear in their proper place, and if it seems that, after 1857, no room remained for further negotiation, it is only because the statement shows the date of the first effective admission into political relations, and not the succession of subsequent and important changes gradually effected by treaty, time, and usage in the position of the states, when their protection was at length accepted by the Crown as a solemn duty. It will also be remembered that the Burmese and Shan states brought into the protectorate by Lord Dufferin are excluded from this work as previously stated.



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Tabular Statement showing the Year in which the Leading States were finally entered in the Treaty Map

State.	Geographical Position.	Nature of Treaty.[1]	Date of Treaty.	Remarks.
Sawantwari .	Bombay . .	Offensive and defensive alliance against the Pirate Angria	Jan. 12, 1730	The peace was constantly broken and re-established by subsequent Treaties.
Janjira . .	Do. . .	General Alliance, and specially against piracy	Dec. 6, 1733	
Poona, the Peshwa (Baji Rao)	Do. . .	Maritime and Commercial Treaty	July 20, 1739	Poona became a Party to the Triple alliance against Tipu in 1790, and to a subsidiary Treaty in 1802.
Hyderabad .	Deccan . .	Agreement of mutual neutrality	May 14, 1759	Treaty regarding the Sarkars and military alliance in 1766.
Jafarabad .	Kathiawar, Bombay	Friendship and protection of British marine	Jan. 3, 1761	A dependency of Janjirmst ded
Tanjore . .	Madras . .	Guarantee to a tributary agreement between the Carnatic and Tanjore	Oct. 12, 1762	The first direct ag with ment with the sequent pany in 1776. were titular dignity Patiala, extinguished in . Kalsia,
Manipur .	Assam . .	Defensive alliance .	1762	Treaty of 1762 is lost. ot. The first extant Treaty is dated 1833.
Mysore under Hyder Ali	Madras . .	Mutual assistance .	May 27, 1763	Concluded by the Bom- bay Government.
Oudh . .	United Provinces	Firm union . .	Aug. 16, 1765	Annexed in 1856.
Hill Tipperah	Eastern Bengal	A state of subjection declared	1765	No Treaty given.
Kolhapur .	Bombay . .	Firm friendship .	Jan. 12, 1766	Dictated after an expedition to put down piracy.
Cambay . .	Do. . .	Treaty against the piratical Kolis	April 23, 1771	The Nawab describes himself as the Company's servant.
Kuch Behar .	Bengal . .	Admission of subjection	April 5, 1773	
Bhutan . .	...	Treaty of peace . .	April 25, 1774	
Dholpur . .	Rajputana Trans-Chambal	Perpetual friendship .	Dec. 2, 1779	After the Treaty of Salbai Dholpur was abandoned. Its permanent admission to the Treaty Map dates from 1806.
Gwalior . .	Central India .	Peace and alliance .	Oct. 13, 1781	The Treaty of Sarje Anjengaon is dated Dec. 30, 1803.

State.	Geographical Position.	Nature of Treaty.	Date of Treaty.	Remarks.
Nagpore or Berar	Now the Central Provinces	Friendship and military alliance	1781	
Carnatic or Arcot	Madras . .	Perpetual friendship .	Feb. 24, 1787	The Treaty with France, 1754, left Muhammad Ali Nawab of the Carnatic. The Nawab resigned the Government in 1801.
Coorg . .	Do. . .	Friendship and alliance against Tipu	Oct. 26, 1790	State annexed after war in May 1834.
Cochin . .	Do. . .	Vassalage and alliance	Jan. 6, 1791	
Rampur . .	United Provinces	Engagement of guarantee	Dec. 13, 1794	The Company also gave their guarantee in 1774 after the Rohilla war.
Travancore .	Madras . .	Friendship . .	Nov. 17, 1795	Additions made to the Treaty in 1805, as the intentions of 1795 were not fulfilled.
[illegible]ysore (under [illegible]s new dyn-[illegible]y)	Do. . .	Protective and subsidiary	July 8, 1799	
[illegible]da . .	Bombay . .	Engagement to promote good understanding and subsidiary alliance	June 6, 1802	A prior Treaty of alliance, dated Jan. 26, 1780, was cancelled by the Treaty of Salbai.
Bansda . .	Do. . .	Made tributary by the Treaty of Bassein with the Peshwa	Dec. 31, 1802	
[illegible]dukkottai .	Madras . .	Sanad or grant . .	July 8, 1803	
[illegible]rtpur .	Eastern Rajputana	Perpetual friendship .	Sept. 3, 1803	The alliance was interrupted by breach of agreement and renewed in 1805.
[illegible] . .	Rajputana (near Delhi)	Offensive and defensive alliance	Nov. 14, 1803	
[illegible] . .	Bombay Rewa Kanta Agency	Tributary alliance .	Dec. 15, 1803	A Treaty with Lunawara, as well as this Treaty, dissolved by Lord Cornwallis.
[illegible] .	Bombay do. .	Protection . .	Dec. 30, 1803	By the Treaty with Sindhia.
[illegible] .	Bundelkhand .	Friendship and subordination	March 15, 1804	Treaty of protection in 1818.
[illegible]	Do. . .	Grant of state on submission	July 29, 1804	
[illegible]	[illegible]ntral India .	Treaty of peace and amity	Dec. 24, 1805	Dictated by Lord Lake.
[illegible]	[illegible]elkhand .	Recognition by Sanad	April 4, 1806	
[illegible]	[illegible]hand .	Do. . . .	Nov. 18, 1806	

State.	Geographical Position.	Nature of Treaty.	Date of Treaty.	Remarks.
Baoni (Muhammadan state)	Bundelkhand .	Recognition by letter .	Dec. 24, 1806	
Panna . .	Do.	Confirmation by Sanad	Feb. 4, 1807	
Ajaigarh .	Do.	Do. . ,	June 8, 1807	
Kathiawar settlement (first-class chiefs are Junagarh, Nawanagar, Porbandar, Bhaunagar, Drangdra, Morvi, Gondal)	Bombay Presidency	The security bond against misbehaviour was signed by the principal chiefs, when in 1807 the joint forces of the British and the Gaikwar entered Kathiawar	1807	
Nagod . .	Baghelkhand .	Subordination . .	March 11, 1809	
Lahore . .	The Punjab .	Treaty of friendship concluded by Metcalfe	April 25, 1809	A special Treaty against Holkar was concluded on Jan. 1, 1806.
Cis-Sutlej chiefs	Do.	Proclamation of guarantee against encroachment from Lahore	May 3, 1809	The chief states with whom also subsequent engagements were made are Patiala, Jind, Nabha, Kalsia, Maler Kotla, Faridkot.
Lower Sind .	Now part of the Presidency of Bombay	Eternal friendship with the three Amirs Mir Gholam Ali, Mir Karim Ali, Mir Murad Ali	Aug. 22, 1809	The Talpur dynasty granted commercial privileges in April 1800.
Bijawar . .	Bundelkhand .	Sanad on submission .	March 27, 1811	
Mahi Kanta Agency; Idar and other states	Bombay . .	Settlement by security bonds	1812	Some of the Rewa Kanta states were included in the settlement.
Nawanagar .	Kathiawar, Bombay	Submission . .	Feb. 23, 1812	
Rewa . .	Baghelkhand .	Protection . .	Oct. 5, 1812	
Orchha . .	Bundelkhand .	Subordinate alliance .	Dec. 23, 1812	
Radhanpur .	Bombay . .	Relations with Baroda mediated by Treaty	Dec. 16, 1813	

SECOND PERIOD

State.	Geographical Position.	Nature of Treaty.	Date of Treaty.	Remarks.
Hill states, Punjab	Tract of Hills from the Gogra to the Sutlej	Sanads of title, *e.g.* that given to Sirmur	Sept. 21, 1815	The result of the Nepal war.
Patiala	Punjab	Sanad granting territory	Oct. 20, 1815	
Kutch	Bombay	Protection and subordinate alliance	Jan. 15, 1816	Treaties for the suppression of piracy made in 1809.
Nepal	Northern Frontier of India	Treaty of peace and friendship	March 4, 1816	Some delay occurred on the part of Nepal in ratifying the Treaty presented in 1815.
Sikkim	Bengal	Subordinate alliance	Feb. 10, 1817.	
Tonk	Rajputana	Engagement of guarantee and subordinate alliance	Nov. 9, 1817	The first fruits of the Pindari war.
Karauli	Do.	Protectorate	Nov. 9, 1817	
Samthar	Bundelkhand	Subordination	Nov. 12, 1817	
Palanpur	Bombay	Mediated Treaty of subordination	Nov. 28, 1817	A tributary engagement was mediated in 1809.
Bhopal	Central India	Subordinate alliance granted by letter	Dec. 23, 1817	Bhopal was refused a Treaty in 1809.
Kotah	Rajputana	Protectorate	Dec. 25, 1817	
Tributary Mahals of Chota Nagpore	Bengal	These territories were ceded in 1817, and engagements of subjection taken from the chiefs	1817 to 1825	
Jaora	Central India	Protected by Treaty with Holkar	Jan. 6, 1818	
Jodhpur (Marwar)	Rajputana	Protectorate	Jan. 6, 1818	A previous Treaty of 1803 was dissolved.
Udaipur (Meywar)	Do.	Do.	Jan. 13, 1818	
Bundi	Do.	Do.	Feb. 10, 1818	
Bikanir	Do.	Do.	March 9, 1818	Request for Treaty in 1808 not granted.
Kishengarh	Do.	Do.	March 26, 1818	
Jaipur	Do.	Do.	April 2, 1818	A previous Treaty of 1802 declared void.
Partabgarh	Do.	Do.	Oct. 5, 1818	A previous alliance dissolved.
Ali Rajpur	Central India	Mediatised	Dec. 8, 1818	Part of the Central India political settlement.
Dungarpur	Rajputana	Protectorate	Dec. 11, 1818	

State.	Geographical Position.	Nature of Treaty.	Date of Treaty.	Remarks.
Dewas . .	Central India .	Protectorate . .	Dec. 12, 1818	The date of ratification by the Governor-General is given.
Jaisalmir .	Rajputana .	Do. . . .	Dec. 12, 1818	
Banswara .	Do. .	Do. . . .	Dec. 25, 1818	An offer of Alliance declined by the Company in 1812.
Ratlam, Sitamau, Sailana }	Western Malwa, Central India	Engagements for their protection mediated by Sir John Malcolm	Jan. 5, 1819	
Dhar . .	Central India .	Protectorate . .	Jan. 10, 1819	
Satara . .	Bombay . .	State created by Lord Hastings	Sept. 25, 1819	Lapsed.
Tehri or Garhwal	United Provinces	A Sanad of restoration after Nepal war	March 4, 1820	Regranted by Sanad, Sept. 6, 1859.
Jhabua . .	Bhopawar, Central India	Guaranteed by engagement	Aug. 22, 1821	
Rajpipla .	Bombay Rewa Kanta . .	Agreement to submit to the British settlement	Oct. 11, 1821	The Baroda state on Apr. 3, 1820, agreed to prefer no claims against the chiefs and residents of Kathiawar and Mahi Kanta except through the British.
Chhota Udaipur . .	Do. .	Engagement of subordination	Nov. 21, 1822	Executed in consequence of doubt as to whether the above-cited agreement applied to this state.
Sirohi . .	Rajputana .	Protectorate . .	Sept. 11, 1823	The state was claimed by Jodhpur, and thus its inclusion in the protectorate was delayed.
Ava . .	Burma . .	Treaty of peace and friendship	Feb. 24, 1826	
Moharbhanj and other Tributary Mahals of Orissa	Bengal . .	Engagement of submission	June 1829	
Khairpur .	Sind . .	Treaty of friendship and commerce	April 4, 1832	
Bahawalpur .	Punjab . .	Eternal friendship and the promotion of commerce	Feb. 2, 1833	
Jhalawar .	Rajputana .	Protection . .	April 8, 1838	This principality was carved out of Kotah.
Kashmir .	Northern India	Creation of the state out of the ruins of the Lahore state	March 16, 1846	
Trans-Sutlej states	Punjab . .	Recognition . .	Oct. 1846	The dates of the Sanads vary. That given is the Sanad of the Raja of Mandi.
Jind . .	Do. .	Grant of new estates after the Punjab war	Sept. 22, 1847	
Shahpura .	Rajputana .	Protection . .	June 27, 1848	

CHAPTER III

THE POLICY OF THE RING-FENCE

Adherence to a policy of non-intervention up to 1813.

§ 22. To the preceding chapter I attached the title "Treaty Map," because, in examining the relations of the British Government with the states of India, the eye must not be directed merely to the engagements entered into with one or another state, but it must take in the whole area covered by the Company's alliances. The careful student of Indian history can tell by a glance at the map of India at any period, provided that it shows the country protected as well as the country annexed, what was then the guiding spirit of British dealings with its allies. As a fresh hand fills in a space with British protection, a new factor is introduced into the spirit of Indian intercourse, or *commercium*, with the Native states; and this influence is not confined to British dealings with the sovereignties then for the first time brought under protection. It modifies and affects the future conduct of relations with the states already included in the protectorate. The key note of the foreign policy of the Company towards the princes of the country from 1757, when Clive, after the victory of Plassey, won on the 23rd of June, acquired the Zemindari of the district round Calcutta, to the close of Lord Minto's rule as Governor-General in 1813, was one of non-

intervention or limited liability. The omission from the map of protected India in 1813 of the whole of the Punjab beyond the Sutlej, of almost the whole of Rajputana, of much of Central India, of many of the Bombay states other than Baroda and its tributaries, and of Central and Upper Sind, attests the self-restraint which the Presidency Governors, and the nine Governor-Generals[1] who held office during that period from 1774 onwards, imposed on themselves. Beyond the ring-fence of the Company's dominion they avoided intercourse with the chiefs, in the hope that the stronger organisations would absorb the weaker, and become settled states. When the events of these fifty-six busy years are called to mind, the palpable anxiety of the Company to avoid both annexation and alliances stands out in the clearest relief. There is the battle of Buxar in 1764, when Oudh lay at the feet of Major Munro, but was not annexed; the Rohilla war, after which Warren Hastings conferred the conquered territories on the Wazir of Oudh; the first Maratha war, which closed, after the victorious march of General Goddard from the banks of the Jamna to Ahmedabad, in the restitution of Bassein and the restoration of the *status quo* by the Treaty of Salbai, dated the 17th of March 1782; and, finally, four Mysore wars, ending with the fall of Seringapatam in 1799, from which the allies of the British derived the main advantage, whilst the former Hindu dynasty of Mysore was gratuitously raised from the ashes of Haidar Ali's and Tipu's dominion.

The second Maratha war was inevitably made an

[1] Of these Sir Alured Clarke merely acted as Governor-General for a few weeks pending the arrival of the Earl of Mornington in 1798. The title of Governor-General was assumed by Warren Hastings, previously Governor of Bengal, in 1774.

occasion for extending the political ascendancy of the British, but the terms of peace were conspicuous for their moderation, and after the departure of Lord Mornington, better known as Marquis Wellesley, the three Governor-Generals who filled up the interval till the arrival of Lord Moira, reverted to the previous policy of non-intervention, broken only by the treaty with Ranjit Singh in 1809. Thus, obedient to the orders which they received from home, they nursed the storm which finally blew to ribbons all the paper restrictions imposed by Acts of Parliament or by the Court of Directors upon the expansion of the Indian Empire. The term of Lord Wellesley's office constituted for an interval a striking departure from the rule of his predecessors; and in July 1804 he tried to allay the fears of his masters by the assurance that nothing more remained to be added. He wrote: "A general bond of connexion is now established between the British Government and the principal states of India, on principles which render it the interest of every state to maintain its alliance with the British Government." But the first act of his successor, Lord Cornwallis, was to draw up a scheme of withdrawal, which, after his untimely death at Ghazipur, guided the political actions of his successors. It seems that Lord Minto fretted against the ill-considered restraints imposed on him, and was not slow to observe in the constant disturbances reported to him from Central India the impending collapse of the policy of unconcern. But beyond sending three embassies to Persia, Afghanistan, and Lahore, and accompanying in person an expedition to Java, he dared not go. With some difficulty he managed to prolong to the close of 1813 the continuity of the policy of non-intervention handed down to him.

His treaty with the Lion of the Punjab served only to accentuate the spirit of the time. The limited extension of alliances, which it was impossible for Lord Minto and his predecessors to avoid, was forced on the Company by the absolute necessities of self-defence, and by the outbreak of hostilities with France in Europe, which exercised a direct influence on India's history. For the rest, the steadfast adherence of the British authorities to the avoidance of treaties and alliances claims the more particular notice, because, until the passing of the "Regulating Act of 1772," really passed in 1773, the thirteenth year of the reign of George III., no restriction was placed upon the diplomatic powers of the local Governors; and even after its enactment the difficulty of communication, and the unexpected course and pressure of French wars, often compelled the local Governments to act independently of the supreme authority.

Four subdivisions of the period.

§ 23. The scene shifts so frequently on the stage of Indian history, and the plot is so complicated by the personal ambitions and changeful policies of the adventurers who came forward as the leading actors in the early part of the last century and the close of the preceding one, that it is only possible to bring into our field of view a very limited group of historical personages and leading events. Until Lord Hastings undertook his political settlements, the affairs of the country princes continued to be tangled, and in no period of Indian history was the entanglement more confusing than in the years with which we are about to deal. But a brief sketch of the Company's wars and treaties to the close of the eighteenth century will suffice to place in the foreground three prominent facts. The Company was compelled in its own self-

defence to conclude certain alliances. In the next place, it avoided them as long as possible, and it extended its liabilities no further than the absolute necessities of the case demanded. Finally, in accordance with principles of international law, it treated its allies as if they were independent nations. From the mass of incident with which the early struggles of the British for dominion and supremacy in India are enlivened, four central transactions may be selected as the pivots upon which their leading treaties and the main results of their contest turn. The first of these is the Treaty of Oudh, dated the 16th of August 1765, by which it was intended to fix the limits of the Company's extension in Bengal; while the second is the Triple alliance with the Peshwa and the Nizam against Tipu Sultan, dated the 1st of June 1790, which led eventually to the suppression of Haidar Ali's dominion in the South, and to the conclusion of a series of alliances with Hyderabad, Poona, Tanjore, Travancore, and other principalities in the Presidencies of Madras and Bombay. The Treaty of Bassein, dated the 31st of December 1802, next revealed the fact that power had departed from the head of the Maratha confederacy, and it entailed fresh wars and alliances with the leading members of that confederacy. The fourth transaction was the Treaty of Lahore, dated the 25th of April 1809. These four documents stand out as conspicuous landmarks in the period commencing with Clive's victory at Plassey, and ending with the close of Lord Minto's administration. A short account of the transactions which led up to them will now be given, to be followed by a review of the subsidiary alliances negotiated by Lord Wellesley.

§ 24. In August 1690 Job Charnock, chief of the

State of affairs in Bengal and Oudh

Hooghly factory, was permitted by the Native authorities to return to Calcutta, from which he had twice been driven out. Half a century later the Maratha horsemen carried their plundering expeditions into the remote provinces of the Mughal empire right up to the ditch of Calcutta. In 1756 the usurper Ali Vardi Khan, Nawab of Bengal, was succeeded by his hot-headed grand-nephew Murad, alias Siraj-ud-daula, five years before the ambitious schemes of the Marathas for the conquest of Northern India were crushed on the bloody field of Panipat. Within a few weeks of his succession, Siraj-ud-daula attacked Calcutta in the middle of June, shutting up 146 Europeans, who had surrendered on the 20th of June, in the Black Hole, where all but 23 were suffocated in a single night of horrors. Clive, who had recently returned to Madras, having captured Gheria in Bombay on his way out, was preparing for a struggle with the French at Hyderabad, but he at once realised the necessity of deferring action in the South until the wrong done to his countrymen had been avenged in Bengal. He started in October with 900 European and 1500 Native troops, accompanied by Admiral Watson's squadron, and after his recapture of Calcutta on the 2nd of January 1757, he defeated the Nawab's army, and took from him an engagement not to molest the Company, which was followed by an "honourable Treaty of peace and mutual alliance." The area of French hostilities, which had begun with the capture of Minorca by the French, and are known in history as the Seven Years' War, now extended to India, and Clive attacked the French settlement at Chandanagore. Faithless to his treaty, Siraj-ud-daula rendered aid to the French, and Clive, having agreed by treaty to support his rival, Mir Jafar Ali, marched

out to Plassey, some eighty miles from Calcutta. On the 23rd of June, with a trivial loss, Clive won a decisive, if not glorious, victory during the downpour of a monsoon storm, which led to the formation of the Bengal Province. During Clive's absence in England Mir Jafar was deposed, and his son-in-law Mir Kasim was set up in his place on terms more advantageous to the Company than agreeable to the new Nawab, who straightway entered into an alliance with the Nawab Wazir of Oudh for the overthrow of the British power.

The decisive victory of Buxar, won by Major Munro on the 23rd of October 1764, laid Oudh as well as Bengal at the feet of the Company, and Lord Clive returned to India to decide the all-important issue, whether the territories of Oudh should be annexed or brought into alliance with the Company. Having assured his own position in Bengal by acquiring from Shah Alam, Emperor of Delhi, the title of Diwan of Bengal, Behar, and Orissa, and having taken note of the revival of ambitious projects amongst the Marathas, and of the state of paralysis into which Mughal authority had fallen, Clive boldly decided against the annexation of Oudh. The events of the recent war, however, left the British no option but to enter into some sort of political relations with Oudh, and the Governor of Bengal, in restoring the conquered territories to the Nawab, fancied that he had erected a solid barrier of friendly alliance between his Province and the outer world. The Treaty of "reciprocal friendship," dated the 16th of August 1765, which he concluded with the state of Oudh, marks the first step in the endeavour maintained by the Company in their foreign policy for nearly half a century to enclose British interests within a ring-

fence, and to remain, as far as possible, unconcerned spectators of what might go on beyond it. It was not long before the Company's new ally required their help. The Marathas threatened Rohilkhand, on the frontier of Oudh, and political rather than moral considerations induced Warren Hastings to annex the Rohilla District to Oudh, thus continuing Clive's policy of preserving a buffer-state beyond which events might shape themselves. Behind the curtain of Native rule the Maratha tempests might rage, the rapid process of the decay of Imperial rule might go on, or the striking genius of the then infant Ranjit Singh might found a new Empire. The British rulers were content to wait and see what time might bring. To this principle of non-intervention they adhered so firmly that, when Warren Hastings left India in 1785, the only additions made to the Company's territories since the departure of Clive were the formal transfers of Benares and Ghazipur, and two small acquisitions in Bombay.

§ 25. The policy which enclosed and covered the Company's acquisitions in Bengal by creating a buffer kingdom in Oudh was not adapted to the conditions of Madras. The authorities wished that it might be found applicable, but their wishes did not alter facts; and much as they regretted the diversion of the revenues of Bengal to schemes of conquest in the south, they were obliged to submit to necessity. The truth was that the French had gained a start in Hyderabad; and if the political plans of Dupleix and the military contingent organised by Bussy had been left to work out to their natural conclusion, there would have no room for British dominion in Madras, for cherry would have given its name to that idency. Events in another continent determined The political situation in Madras.

the fate of the south of India. Wars between France and England succeeded each other with such rapidity that the subjects of these two powers could not rest at peace in Asia, and their contests dragged in the Native chiefs of India, who, it must be confessed, sought to turn to their own advantage the quarrels of other powers, just as they employed foreign mercenaries in their own disputes with each other. The war of the Austrian succession was being waged in Europe, when Dupleix, who had already been appointed Governor of Pondicherry in 1741, entered upon his ambitious schemes for suppressing the competition of the rival Company. Besides their factories at Masulipatam, Vizagapatam, Porto Novo, and elsewhere, the British held a few possessions on the Coromandel coast, confined to narrow limits, consisting of Fort St. David and a tract round Fort St. George, or Madras, which extended five miles along the coast and one mile inland. The French possessed the prosperous town of Pondicherry, south of Madras, with Mahe in the same parallel of latitude on the Malabar coast, and Karikal, which in 1726 had been acquired from Tanjore. Ceylon still belonged to the Dutch, and Mauritius was in the hands of the French. The military establishments of the two Companies were no more than were required for the defence of their factories and forts. For troops to carry on warfare and to support their policy in the interior, the Governors of Pondicherry and Madras had therefore to look elsewhere. Naturally their eyes turned to Hyderabad which lay near at hand, surrounded by aggressive enemies and on the eve of internal dissensions about the succession to the th which Asaf Jah had established. Round this ce the intrigues of the two European Companies revol

and even peace in Europe did not suspend their activities. Accordingly, the conclusion of the Treaty of Aix-la-Chapelle in 1748, while it ended the war of the Austrian succession in the west, saw the outbreak of the wars of Indian succession in Hyderabad and the Carnatic. When at last affairs were being settled in India, the Seven Years' War broke out in Europe, and the ink on the Peace of Paris concluded in 1763 was hardly dry when fresh complications arose out of the American war. Thus, the struggle between France and England kept open the quarrels of the two Companies in Madras, entangled the British with alliances and jealousies, and prevented a satisfactory settlement of the questions which kept the Native states in the south of India at war with each other.

The leading princes who were engaged in chronic disputes with their neighbours in Madras were very different from the feeble antagonists disposed of in Bengal. The Nizam of Hyderabad, formerly the Imperial (Subahdar) Viceroy of the Deccan, the Sultan of Mysore, and the Peshwa of Poona, were all potentates who commanded large armies and cherished great schemes of conquest; while minor parts in the struggle were played by the Nawab of the Carnatic, and the two Hindu Rajas of Tanjore and Travancore. Of these Hyderabad had a special importance, because the Carnatic was nominally subordinate to it, and the Nawab of the Carnatic claimed allegiance from Trichinopoly and tribute from Tanjore. The Carnatic was the name given to the country lying along the Coromandel coast from the Kistna to the Cauvery, and between the sea and the central plateau of southern India. In 1732 the Nizam's Deputy, whose capital was at Arcot, died, and a dispute arose as to

the succession. The Marathas appeared on the scene, and at the battle of Damalcheruvu in May 1740 defeated and killed the Nawab Dost Ali, whose son-in-law, Chanda Saheb, was also turned out of Trichinopoly. Thereon Benoît Dumas, the French Governor of Pondicherry, offered an asylum to the fugitives in the French possessions. The Nizam now exercised his lawful authority and appointed Anwar-uddin Nawab of the Carnatic, whose son, Muhammad Ali, escaped from the battle of Ambur after the defeat and death of his father. A year before this event, in 1748, Asaf Jah, the famous Viceroy of the Deccan, having practically achieved his independence of Delhi had died. Hyderabad at once became the scene of a war of succession, the French supporting Muzaffar Jang, a grandson of the deceased Viceroy, against his son Nasir Jang, whose cause was espoused by the English. For the Carnatic the French put forward Chanda Saheb, while the British took the part of Muhammad Ali who at least had a better title to the throne of Arcot than his rival could claim. Three of these candidates met with their deaths at no distance of time. Nazir was assassinated at Gingee and Muzaffar Jang fell in a skirmish with Pathans, while Chanda Saheb lived until 1752, when he was put to death by the troops of Tanjore. Muhammad Ali lived to enjoy his title as Nawab of the Carnatic under the solemn guarantee of the Treaty of Paris. But the efforts put forth by the rival companies on behalf on their nominees filled southern India with the clash of arms, and led the victors into a series wars with Mysore.

To that country attention must now be turned. It had lately exchanged its Hindu for a Muhammadan dynasty, a change which was watched with some

concern by the Peshwa's court at Poona and not without suspicion by the Muhammadan rulers of Hyderabad. The Sultan of Mysore, Haidar Ali, rose to power by deposing his Hindu master, whose forces he commanded in the operations at Trichinopoly. He extended his dominions at the expense of Hyderabad as well as his Hindu neighbours, and his military genius inherited by his son, Tipu Sultan, enabled Mysore to organise a formidable force which more than once exacted inglorious terms from the British. The contrast between the rabble army defeated at Plassey and the Mysore cavalry that overran Madras within sight of the British factory, or the troops that confronted Arthur Wellesley at Seringapatam, explains the long-drawn contest in the south of India, and the impossibility of maintaining there the policy of non-intervention so highly prized in Bengal and Bombay. The Sultan's hand was not only raised against the British. He tore away large strips of territory from Hyderabad. He encouraged Tanjore in evading the demands of the Nawab of the Carnatic, and before his overthrow Tipu despatched embassies both to Constantinople and Paris. But neither Haidar Ali nor his son possessed the art of employing diplomacy to enhance his military strength. Coalitions were discussed and dropped, common enterprises broke down where jealousies were so deeply rooted, and the ally of one day was despoiled of his possessions on the morrow. Between Mysore and Poona any lasting agreement was out of the question, and this deep gulf between the competitors for dominion in Southern India was an obstacle to the policy of the ring-fence which the authorities in Leadenhall Street did not at once realise.

A brief notice of the position of the Marathas is

needed to complete this sketch of the powers which were about to enter upon the final struggle for ascendancy. Balaji, the first Peshwa of Poona, had, in 1720, obtained from the puppet Emperor a confirmation of the tribute or chauth, 25 per cent of the revenues, which Sivaji had levied by force. The third Peshwa enforced the claim by invading Hyderabad, and sending expeditions into the Carnatic. The gradual break-up of the Maratha confederacy after the battle of Panipat, and the growing independence of the Central Indian powers, Baroda, Gwalior, Indore, and Nagpore, tended to direct what energies the Poona Government still possessed towards the Southern Deccan and the Carnatic. The Company, who had lately fortified their own position, both in Bengal and in the Northern Sarkars and Madras, by securing the confirmatory title of the Emperor, were as yet hardly strong enough to dispute the title of the Peshwa to chauth, and in some of their first engagements with other states they formally reserved the rights of the Peshwa. That tax was the main concern of Maratha rule. Expeditions were carried into distant regions not for extension of their dominion but solely for pillage and wanton destruction. What the Maratha hordes could not carry away they wantonly destroyed. In far-off Bengal even a "ditch" if properly defended or a buffer-state of Oudh might keep off the freebooters, but nearer home one swarm of robbers succeeded another, and the admission of their rights as fixed to-day was not a settlement which they were likely to respect on the morrow. Independently, too, of his pecuniary interests in the chauth, the Peshwa, as a Brahman, had a religious sympathy with the Hindu dynasties still surviving in the south; and in addition to his traditional and racial hostility to the

Nizam, he resented the means by which Haidar Ali had rebelled against his Hindu master and strengthened his position in Mysore at the cost of Maratha interests. On the other hand, the Poona Court watched with some degree of suspicion the growing power of the British, who, although they recognised the Maratha claims to tribute, yet were already exhibiting too much energy in the suppression of piracy and in negotiations with the maritime states. The Peshwa, compelled to be careful by the delicate state of his relations with the members of the Maratha confederacy, and in doubts as to whether he had most to fear from the Nizam or from Haidar Ali, hoped to play off the English against one or the other, and to step in where and when circumstances might offer a favourable opportunity for demanding payment of arrears of tribute.

Dissolution of French power, and its legacy.

§ 26. Upon this stormy sea of politics the rivalry of Dupleix drove the British Company, who would have much preferred a policy of watchful inactivity; and although the immediate result of the contest was the downfall of the French, the entanglements which their foreign policy had woven were not so easily untied. Each of the three native rulers who were aiming at sovereignty desired to see both his adversaries weakened, and felt that the aggrandisement of one at the expense of the other would not improve his own position. If the Nizam established authority over the province of the Carnatic and defeated Haidar Ali, the Peshwa could not expect his traditional enemy strengthened by success to give him tribute. Himself to all intents a rebel against the Emperor, the Viceroy of the Deccan was not likely to pay any respect to a vague title to chauth wrung from the imperial puppet. If the Peshwa succeeded, the

Nizam, who had already suffered at the hands of the Marathas, would receive further drafts on his treasury for arrears of tribute supported by plundering expeditions. The success of Haidar Ali, who had shown conspicuous military talent, and whose strategic basis of operations supported by the forts of Dharwar, Bednore, and Bangalore, and the natural strength of the Ghats and Droogs, made him almost unassailable, would leave the Nizam face to face with a claimant for the viceregal office in the Deccan, and the Peshwa in antagonism with a younger and a stronger Muhammadan power than the Deccan had yet witnessed. As regards a British success, it is probable that at this period neither the Nizam, nor the Sultan of Mysore, nor the Peshwa entertained any serious alarm for his own safety from the proceedings of the European Companies. So far, the French had been useful to Muzaffar Jang and his successor Salabut Jang, and their influence in Hyderabad seemed tolerably well established. But direct hostilities were now to take the place of intrigue, and within five years of the outbreak of war the French Company was to be reduced to impotence.

The arrival of the impatient and imperious Lally with reinforcements and a French squadron, on April 28, 1758, promised victory for the French. Hitherto the genius and military talents of Clive had turned cowards into soldiers at Arcot, secured the safety of Trichinopoly, and frustrated French endeavours to win over the Mysoreans. During his absence in Bengal the French had greatly improved their position in the Northern Sarkars, but their success at Chitapet in the south was balanced by British gains at Madura. Both sides had avoided any decisive action up to the close of 1757. But Lally was not

disposed to play a waiting game; Cuddalore was taken, and soon afterwards, in June, Fort St. David capitulated to a superior French force. In the following year Madras would have fallen but for the timely arrival of the British fleet on the 16th of February 1759, that fateful year which was to witness the surrender of Quebec, the battle of Minden, and Hawke's irresistible swoop on Conflans in Quiberon Bay. Lally, however, had made a fatal mistake in recalling Bussy from the court of the Nizam, and he paid the penalty. British influence naturally rushed into the vacuum created by his withdrawal from Hyderabad, and Salabut Jang undertook, on the 14th of May 1759, to expel the French. Thus the important step of bringing Hyderabad into treaty relations was taken. After the siege and recapture of Wandiwash the French were routed in 1760 by the English troops under Colonel Eyre Coote, and finally Pondicherry was besieged, and surrendered on the 14th of January 1761. In the same year Salabut Jang was deposed by Nizam Ali, and, when the "honourable and beneficial" Peace of Paris was proclaimed in 1763, the French Government formally recognised the British candidate, Muhammad Ali, as the Nawab of the Carnatic. Although, therefore, the ruins of Pondicherry were restored to the French by the same treaty, the British Company was now pledged in the face of Europe to support Muhammad Ali in the government of the Carnatic. The legacy of the war with France was a protectorate which was resented by both Haidar Ali and the Nizam, and an obligation of which French intrigue was able to take full advantage. The British received from the Nawab of the Carnatic a Jaghir, which was in due form confirmed by Imperial

Firman in 1765, and thus an attack on the Carnatic henceforth involved not only the duty of assisting an ally, but also the necessity for defending the Company's own possessions.

The first and second Mysore wars.

§ 27. The position so acquired by the Company brought them at once into collision with the Nizam and with Haidar Ali. Nizam Ali, who had succeeded Salabut Jang, was invading the Carnatic when he was ordered to desist, and by a Treaty of Alliance, dated the 12th of November 1766, he was left in no doubt as to the intention of the Company to protect that country. The Nizam broke his agreement, however, and joined with Haidar Ali, but after the discomfiture of the allies at Changama on the 3rd of September 1767, Hyderabad was bound by a fresh treaty of 1768 to desist from giving any protection or assistance to "Haidar Naik." Haidar Ali thereon continued his operations against the Carnatic, but after the destruction of his fleet he made overtures to Colonel Smith which were rejected. Accordingly, on the 29th of March 1769, he appeared within five miles of Madras itself. Unprepared to meet this assault at headquarters, the Company by a treaty dated the 3rd of April 1769, accepted the terms dictated to them, and closed the first war with Mysore on the basis of a mutual restitution of prisoners and forts. They also agreed that, if either of the "parties shall be attacked, they shall from their respective countries mutually assist each other to drive the enemy out." At the conclusion of this treaty the Company's stock was reduced in value by 60 per cent; but the heaviest part of the price at which they purchased peace was the fresh entanglement it brought. The Marathas seized the opportunity to demand tribute from enfeebled Mysore, and Haidar Ali appealed to

the British for aid. Upon the refusal of the Company to comply, it became clear that peace could not long be maintained. In 1778 the masked assistance which the French had given to America ended after Saratoga in an open alliance, and England and France were once more at war. The British, having conquered all the other French possessions in India, now attacked Mahe, and Haidar Ali, who was at all times well disposed towards the French, retaliated by invading the Carnatic.

The second Mysore war, for which Haidar Ali, then in his seventy-eighth year, had made extensive preparations, commenced in July 1780, and on the 10th of September Baillie's force was annihilated. It is unnecessary to follow the varying fortunes of the campaign, or to dwell upon the successes gained at Tellicherry and Mangalore. The latter town, at which Haidar had established dockyards and an arsenal, suffered many vicissitudes. After capture by the British it had been restored in 1768 only to be retaken in 1781. Tipu secured it notwithstanding a stubborn defence in 1784 to lose it again in 1799. The personal influence of Haidar Ali was clearly established by the failure of the British to set his people against him, although they appealed to the supporters of the old Hindu dynasty at Mysore. Hostilities were not even interrupted by the death of Haidar Ali on the 7th of December 1782, for Tipu Sultan encouraged by French promises maintained the war with unflinching vigour until the peace of Mangalore, dated the 11th of March 1784, which followed after the conclusion of the negociations for the Peace of Versailles in 1783. The Sultan of Mysore had thus conducted two wars against the British with no loss of dignity, and with very

slight injury to his power. The havoc he had wrought on the Company's territories was disastrous, and its effects were accurately described by Edmund Burke, in his speech delivered on the 28th of February 1785 on the debts of the Nawab of Arcot, as having left "the country emptied and disembowelled by so accomplished a desolation." The Fifth Report of the Select Committee on the East India Company, printed by order of the House of Commons on the 28th of July 1812, narrates how, after the termination of the war, there were hardly any signs of the previous occupation of the Company's own territory round Fort St. George save the bones of the people massacred, and the naked walls of burnt houses, choultries, and temples. When to the succession of massacres there was added the horror of famine, the country became depopulated and the treasury empty. By the Treaty of Mangalore the Nawab Tipu Sultan recovered the forts and places he had lost, and agreed to "make no claim whatever in future on the Carnatic." The Rajas of Tanjore and Travancore were expressly included in the arrangements as the allies of the Company, and thus once more the ground was prepared for a fresh outbreak of hostilities.

The Triple Alliance, and third Mysore war.

§ 28. Upon the restoration of peace with the British Tipu turned his attention to the Marathas, and his acts soon revealed the bigotry of the man. His destruction of Hindu temples, and his forcible conversion to the faith of Islam of 100,000 people, afforded a marked contrast to the toleration and conciliatory temper which his father had wisely exhibited. Accordingly, when in 1789 he attacked Cranganore and Jaikotah in Travancore in flagrant defiance of the Treaty of Mangalore, and forced upon

the British the third Mysore war, the Company's officers were able to take advantage of the feeling of animosity which he had provoked at Poona. It was necessary to avoid the mistakes committed in the previous wars, for neither of which had the British been fully prepared. In fact, their forces in the field had frequently been reduced to the verge of starvation. By the triple alliance treaties concluded in July 1790 with Hyderabad and the Peshwa, a league was now formed against Tipu. These alliances were contrary to the policy of the ring-fence, but they were indispensable. After some indecisive campaigns Lord Cornwallis took the command, and the injurious delays which had been involved in the last war by references to Calcutta were thus avoided. The British forces gained possession of the Droogs and Bangalore, whilst the Marathas, still with an eye to their own advantage, took Dharwar. The Nizam's troops operated against the forts north-east of Bangalore. By occupying the passages of the Ghats and depriving Tipu of his seaboard, the British were at last able to march on his capital by the high-level road, when their commissariat arrangements once more broke down. From these difficulties they were extricated by junction with the Marathas, and by organising transport with the aid of the Brinjaris. A final march on Seringapatam brought Tipu to terms, and the Treaty of Peace, dated the 18th March 1792, ended the third Mysore war. The Sultan lost half of his kingdom, which was divided amongst the three allies. From that date Tipu recognised in the British his most formidable competitor in the Carnatic, and took note of the skilful policy of the league by which the peace of Seringapatam had been brought about. He lost no time in opening fresh negotiations with the

French, the Peshwa, and the Nizam; but although the Native states throughout India were now beginning to feel uncomfortable at the prospect of British ascendancy, it did not suit either of those princes to join him just then.

The fourth Mysore war, and its consequent Treaties.

§ 29. The Marathas indeed saw that a favourable opportunity had arrived for promoting their own interests, and that Tipu's help would not be convenient. They revived their claims against Hyderabad for chauth, and since the British declined to help the Nizam in consequence of the determination of Sir John Shore to adhere to a policy of non-intervention, the Marathas inflicted a severe defeat on the Muhammadan state at Kharda, on the 11th of March 1795, whereby the Nizam was forced to pay an indemnity of 3 crores of rupees, and to surrender territory producing an annual revenue of 35 lacs. Once more the Nizam, disgusted with the Company, received French officers, but in 1798 a new Treaty was negotiated with him by which the subsidiary force was made permanent and increased. Meanwhile the accession of Baji Rao to the office of Peshwa, through the influence of Sindhia, had produced dissensions at Poona, where a scheme for a French alliance was being seriously discussed. Events in the Carnatic, accordingly, once more hinged upon the proceedings of France in Europe. Tipu, who was in active correspondence with the French, and had enrolled himself as "citizen" Tipu in a local club, heard rumours of Napoleon's expedition to Egypt. The victory of the Nile, on the 1st of August 1798, shattered his anticipations of a French invasion of India, but, until the battle of Alexandria in 1801 compelled the French to evacuate Egypt, the Sultan of Mysore did not abandon the hope that at least

some important diversion would be made in his favour. He accordingly sent an embassy to the Isle of France, and somewhat prematurely boasted of his intention to sweep the English out of India.

The Company in their turn had no alternative but to complete the work half finished in the last war. By strengthening their alliance with Hyderabad, they were able to count on the co-operation of the Nizam; and, profiting by the experience of the past, they collected ample supplies and transport. Tipu had no allies, and his main defence lay in the strength of the fortress of Seringapatam. His troops, however, saw that fortune had turned, and after two battles had been won by the British on both sides of the Ghats they began to desert their leader. The brilliant capture of Seringapatam by General Harris, on the 4th of May 1799, terminated the fourth Mysore war, and on this occasion the Treaty of Alliance, dated the 8th of July 1799, created the new state of Mysore under a Hindu Maharaja in subordinate alliance with the Company. The Nizam received large additions to his territories and a fresh treaty, whilst the Peshwa refused to accept anything because the Company tacked on to their offer the conclusion of a subsidiary alliance with themselves. Shortly afterwards, however, Holkar defeated the united forces of the Peshwa and Sindhia, and the Peshwa was glad to entertain the British proposals. He signed the Treaty of Bassein, dated the 31st of December 1802, by which he received a subsidiary force of six battalions, and ceded territories for their maintenance, including Bundelkhand. He agreed to submit his disputes with the Nizam and the Gaikwar to the Company's arbitration, and to enter into no negotiations with other powers without consultation with the British. In the event of a British war with

any European nation, the subjects of that nation were to be discharged from his service.

Thus the distant possessions of the Company in the west as well as the south of India were agitated by the storm which raged in Europe, and by the wars which followed it in the East. The policy of non-intervention foundered on the rocks of necessity, and the friendship of Haidar Ali and his successor Tipu Sultan for the French compelled the Company to promote the Triple Alliance of 1790. The ultimate consequences of that alliance, forced upon the British by the necessities of self-defence, were to draw the Treaty map of Southern India as in the main it still remains, and to bring the British into close alliance not only with Hyderabad but also with the Peshwa. If the Peshwa had been in reality what he professed to be, the sovereign of the Maratha nation, the further extension of alliances might have been avoided at least for a time, and the Company would have gained what they sorely needed, quiet rest and breathing time to consolidate their power in the South. But the settlement of the Madras Presidency was no sooner completed, than a fresh demand was made on the British to undertake the establishment of order and settled Government in the Presidency of Bombay. Thus step by step, and still much against their will, the Governor-Generals were compelled to accept their destiny, and to take up the dominion and responsibilities which awaited them in India. Meanwhile, fresh experiences and ideas were being gained which inevitably led to an alteration in the aims and forms, as well as in the extent, of their Treaty obligations. But for the present the Company and its officers at least professed adherence to the general outline of their policy, namely, the avoidance of any

political obligations which were not immediately required.

§ 30. From the Bengal and Madras Presidencies, the course of events now passes on to Bombay, where the Treaty of Bassein involved the British in war with the three leading states of the Maratha confederacy, and in an alliance with another. Ever since its cession to the Company in 1668, Bombay, notwithstanding its magnificent harbour, had disappointed expectations. The headquarters of the British had been moved from Surat to Bombay in 1687, but the future fortress with its five gates and strong ditch was not yet constructed. The defence of Bombay by sea was first undertaken. In 1730 a "firm peace and friendship" was established with the Sar Desai or ruler of Sawantwari, with a view to attacking by sea and land Kanoji Angria, the piratical chief of Kólaba. In 1733 an offensive and defensive alliance was concluded with the Abyssinian dynasty, which had been established at Janjira as Lord Warden of the Ports by the Mughal Empire. In 1739 the first treaty with the Peshwa restricted British sovereignty over the river of Mahim to the limits imposed upon the Portuguese. The same treaty bound the English to arrest and deliver up any slaves that escaped from the Peshwa's jurisdiction. The Peshwa's passes were also required for the Company's boats. In 1756 Clive wrested the fort of Gheria, or Vijayadrug, from the pirates, and it was given to the Marathas in exchange for Bankote, the first foothold gained by the British on the mainland of Bombay. In 1766 Kolhapur was forced to agree to the suppression of piracy. In 1771 the British reduced the piratical Kolis of Taraja, and made it over to the Nawab of Cambay. In 1775 the factories in Sind, established in 1758, were closed

The situation in Bombay. First Maratha war.

owing to the treatment they received from the Native Government. These transactions illustrate the difficulties against which the expansion of Bombay had to contend by sea. By land the position of the British community was still less secure. The town of Bassein on their northern frontier, and the Island of Salsette, which was an inseparable part of Bombay, were coveted possessions which the authorities longed to acquire.

In this state of affairs the opportunity of a disputed succession at Poona tempted the local Government, as similar occasions had tempted the rival Companies in Madras, to secure by diplomacy what they were unable to take by arms. Ragoba, or Raghunath Rao, one of the sons of Baji Rao Peshwa, having got rid of his two nephews, aspired to be Peshwa; and, in 1775 as the price of a British alliance, he promised to hand over to the Bombay authorities Bassein, Salsette, and the islands of Caranja, Kennery, Elephanta, and Hog Island in Bombay harbour, and to secure for them the Gaikwar's share in Broach. The treaty was disapproved of by the Governor-General, and replaced by another in 1776, called the Treaty of Purandhar, which dissolved the alliance with Ragoba. But Salsette, Caranja, Elephanta, and Hog Island were left in British occupation, while Bassein with the other acquisitions was to be restored. It is unnecessary to enter into the details of the first Maratha war, or the convention of Wargaon, because, after a reversion to the alliance with Ragoba, the Treaty of Salbai in 1782 eventually revived the Treaty of Purandhar; and thereafter the politics of Poona were governed by the course of events in Mysore of which an account has just been given.

In the North also the Bombay authorities en-

deavoured, with similar want of success, to extend their authority. The Gaikwars of Baroda thoroughly realised the fact that the Peshwas desired only to weaken them; and when the succession to the Baroda state was disputed on the death of Damaji one party invoked the aid of the British, whilst another paid the Peshwa a liberal succession duty for His Highness's support. The Treaty of Salbai revoked the engagements which the Bombay authorities had made, and from the confusion of disputes regarding successions and the intrigues which followed, it is only necessary to divert attention to the convention of March 15, 1802, which was embodied in the Treaty signed at Cambay on the 6th of June 1802. By that agreement Anand Rao Gaikwar was admitted into the Protectorate, and the assistance of the Company was granted to him in settling the claims of his mercenaries. The British thus acquired an absolute control over Baroda, and the Treaty of Bassein, dated 31st December 1802, which confirmed their arrangements, guaranteed the Company against interference in the settlement of their pecuniary claims against the state. The position reached in 1802 was therefore as follows:—The Gaikwar was already dependent upon the British. The three other principal Maratha states—Gwalior, Indore, and Nagpore—were jealous of each other, and although each of their rulers was impatient of the sovereignty of the Peshwa, he had no desire to see it pass into other hands. The British authorities were still straining to extend their possessions along and beyond the coast-line; but the principle was by this time established that the Government of India, and not the local Government, must take charge of any further negotiations with the Court of Poona.

§ 31. Whilst the Treaty of Bassein was the neces-

The second Maratha war, and events in Central India.

sary corollary to British treaties with Hyderabad, the second Maratha war was the immediate outcome of the treaty itself, and the campaigns which resulted were prosecuted with equal vigour in the South and in the North. Sindhia of Gwalior and the Bhonsla Raghoji of Nagpore in vain united to defeat the results of British diplomacy. The victories of Assaye on the 23rd of September 1803, of Argaon in November, and of Laswari in the same month, and the surrender of Gawalgarh, led to the Treaty of Sarje Anjengaon, dated the 30th of December 1803, with Gwalior, and the Treaty of Devgaon, dated the 17th December 1803, with the Nagpore state. By the first-named treaty, Sindhia ceded territories to the Company, engaged to employ in his service no foreigners whose Government might be at war with the Company, and renounced all claims upon the Emperor. He also took the first step towards a subsidiary alliance with the British. In the two following years these arrangements were further developed. The provisions of the Treaty of Devgaon with the Nagpore state were similar. Undeterred by the fate of Sindhia or that of the Raja of Nagpore, Holkar, whose army was glutted with spoil collected by it in the North, sought an alliance with the Afghans for the overthrow of the Company. His successes against Colonel Monson's force, and his daring attempt to capture Delhi, were avenged at the battle of Deeg, but since Sindhia began to waver in his engagements to the Company, the Maharaja of Indore was unwilling to make peace. At length, failing to induce the Sikhs to take part in his affairs, Holkar was chased across the Beas, on the banks of which he signed the Treaty of Rajpur Ghat on the 24th of December 1805. The terms of his treaty were rather more onerous than those imposed

on Sindhia by the treaty of 1803, but if due allowance is made for the military expenditure which the Maratha chiefs had forced on the Company, their engagements with all three of the Maratha rulers were remarkable for their moderation. Alwar and Bhartpur were admitted into alliance with the British Government in the course of this campaign. The Peshwa was granted a share in the territories acquired from Sindhia and Raghoji Bhonsla under the partition Treaty of Poona, dated the 14th of May 1804, an arrangement which secured to the Company his confirmation of their title to their recent acquisitions. The Nizam also received a share by a separate treaty. Thus the Company was true to the principle of the Triple Alliance of 1790; and although the Mysore wars and the Maratha war had ended in building up their rule both in Madras and in Bombay, these results were neither contemplated nor at the outset desired. The wars they waged were wars of defence, and the terms they exacted after inflicting crushing defeats on their adversaries were conspicuous for their generosity. To the end of the period under present review, relations with the Poona Court continued satisfactory, and Central India may now be left in order to glance at the course of events occurring on the North-western frontier of the Company's dominions.

§ 32. During the proceedings of the second Maratha war, Holkar after his defeat at Deeg sought the help of Ranjit Singh, who had, on his forcible acquisition of Lahore from its ruling Sardars, already assumed the title of Raja in 1799. By the Treaty with Sindhia of the 30th of December 1803, the British had acquired possession of Delhi and Agra, and this expansion of British dominion left Clive's

Punjab affairs.

arrangement with Oudh out of date. The power against which the British had now to provide was not the tottering and divided Maratha confederacy but one approaching from the mountain passes in the North-west, and the buffer-state must be shifted from Oudh to Lahore. No doubt Holkar had foreseen this result, and represented the danger to the Court at Lahore. In the operations against the Marathas, the Malwa Sikhs, south of the Sutlej, had taken part against the British, but the families of Jind and Kythal had subsequently joined the Company. In 1808 the chiefs of these two sections became alarmed at the intervention of Ranjit Singh in the affairs of the Cis-Sutlej states, and earnestly appealed to the British Resident at Delhi for help. Thus, on either side of the growing Sikh power the Company had cause for disquietude and intervention. Once more a fear of French intrigues, which had operated so powerfully to extend the red line of British dominion on the map in Southern India, was to exercise a similar influence in a new direction. The victories of Nelson had given to the British the command of the sea, and citizen Tipu had waited in vain for the French ships. But aggressions overland still remained open to the inveterate enemies of England, and it was natural that the overthrow of Prussia and the Treaty of Tilsit in 1807, by promoting friendship between France and Russia, should turn the thoughts of Lord Minto to the North-western Frontier of India. Ambassadors were despatched to Persia and to Peshawar, whilst Sir Charles Metcalfe was deputed to visit the court of Ranjit Singh at Lahore. As Metcalfe proceeded on his way, the Raja of Patiala, chief of the Phulkian house, pre-eminent in the *misls* or confederacies of the Malwa Sikhs, earnestly represented the danger to

which the Cis-Sutlej Sikhs were exposed by the unscrupulous ambition of Ranjit Singh. But the Envoy could only decline with politeness the keys of the city, which the Raja offered to him as a token of submission in return for protection. His instructions were to offer an alliance of offence and defence to Ranjit Singh against the French, and the intrusion of Cis-Sutlej affairs into the discussion would have complicated matters, and aggravated a potentate whose ambition contemplated the annexation and absorption of all the Malwa, as well as the Manjha Sikhs. Ranjit Singh, saw his opportunity, and on his part demanded, as the price of his adhesion to an alliance against the French, the Company's formal recognition of his sovereignty over all the Sikhs both north and south of the Sutlej. While Metcalfe was referring to Calcutta for instructions, the astute ruler of the Punjab proceeded without a moment's delay against Faridkot and other of the Phulkian states, taking the British Envoy with him as an unwilling spectator of these aggressions. This action precipitated a crisis. Professions of indifference and of easy contentment with the established policy of the ring-fence satisfied no one. The authorities dare not ignore so public an affront; they and their allies could not but perceive that the policy of non-intervention was bearing its natural fruit. Metcalfe accordingly withdrew from the camp of Ranjit Singh, and in due course was instructed to remind the Raja of Lahore that during the Maratha war he had himself suggested the Sutlej as the boundary of the Punjab, and that the British, having conquered the Marathas, had taken, and intended to maintain, the Cis-Sutlej chiefs under their protection. The ruler of the Punjab was, therefore, required to remove his army to the north of the river.

The issue of peace or war trembled in the balance. On both sides preparations were made for the latter contingency, but, after mature deliberation, the good sense of Ranjit Singh, and his appreciation of his own difficulties on the one hand and of the Company's power on the other, induced him to evacuate Faridkot and to withdraw his troops. On the 25th of April 1809 he signed the Treaty of Lahore, by which the British undertook to abstain from interference with his subjects north of the Sutlej, whilst he agreed to respect the territories of the Sikh chiefs south of the river. The Cis-Sutlej states were then formally included in the Protectorate map of India. This treaty, which was practically forced upon Lord Minto, as much by the old scare of French aggression as by the bold policy of the ruler of the Punjab, fitly closes the first period of the policy of non-intervention. It was, however, a treaty of equal alliance, and not, as in the case of the Maratha states, an engagement of subordinate isolation. It left the Maharaja of Lahore free to work his will on the principalities north of the Sutlej, and it imposed no restriction on his military force. It thus gave faithful expression to the policy inaugurated by Clive, but it carried with it the seeds of further interference with the country powers.

Endeavours to avoid intervention or alliances.

§ 33. The irresistible force of necessity drove the Company's officers so far ahead of their instructions from home and their own wishes that, in reviewing the growth of dominion and ascendancy between 1757 and 1813, one is apt to overlook the fact that they persistently exercised the greatest self-restraint, and frequently refused to include states in the Treaty map. Outside India there was nothing to be gained by inaction, and the Company's position was established in Penang in 1786, in Burma in 1795, in

Ceylon in 1796, and, as opportunity offered, along the littoral of the Persian Gulf and Arabia. But the rulers of India, mindful of the policy laid down in 1793 by the Act of 33 George III. cap. lii., persistently refused protection to the princes of Rajputana, and even after defeating Sindhia they bound themselves by their treaty, dated the 22nd of November 1805, not to enter into treaties with Udaipur, Jodhpur, and other states, except Bhartpur and Alwar. Bikanir, Banswara, and Bhopal sought protection and were refused it, whilst several engagements negotiated by the authorities in Bombay were disallowed. In Bundelkhand the petty chiefs were required to renounce all claim to the British protection. Partabgarh and Jaipur were cut adrift from their alliances notwithstanding the earnest protest of Lord Lake. Almost the whole of Rajputana, which now encloses 128,918 square miles of protectorate,[1] and much of Central India, which now occupies 77,395 square miles, remained unwritten on the Treaty map. Sind was most indistinctly traced on the map by the short and vague treaty of the 16th of November 1809. This instrument claims attention, inasmuch as the treaty of alliance which Captain Seton negotiated in the preceding year was not ratified because it went too far in the direction of a protectorate. In Punjab and Kashmir the Sikhs were left to consolidate empire. Nepal was released from its treaty obligations. When Lord Wellesley left India, his successors used their best endeavours to revert to the policy of the ring-fence; but events were too strong for them, and the settlements which Lord Hastings undertook were the inevitable result. Before, however, a fresh

[1] The area is taken from vol. iv. chap. iii. of the *Imperial Gazetteer of India.*

chapter is opened, this light sketch of the first period of Indian treaties must be completed by a brief account of their form and substance, and by a passing reference to the subsidiary treaties.

The forms and general substance of the treaties of the period.

§ 34. Some idea of the substance of the treaties, concluded in the period preceding 1814, will have been gathered from the account just given. The treaties negotiated by Lord Wellesley anticipated to a certain extent, both in matter and form, the engagements of the Governor-General, who deserves the title of the Treaty-maker, Lord Hastings. But generally the point of view from which the British regarded the Native Princes, to whom they offered alliances up to the beginning of the nineteenth century, was that of equal and independent states. The terms and the forms of negotiation were reciprocal. Reciprocity was not, however, expressed in the affected terms of equality which Clive employed. For instance, his treaty with Siraj ud daula, concluded on the 9th of February 1757, a week after the recapture of Calcutta was signed and sealed by the Nawab "in the presence of God and his prophet," whilst Colonel Clive on the 12th of February declared "in the presence of God and our Saviour" the adherence of the English to the articles of the treaty. With Jafar Ali Khan the declaration of the Company's agreement was made "on the Holy Gospels and before God," whilst he swore "by God and the Prophet of God." In the treaty with Kolhapur, concluded on the 12th of January 1766, for the suppression of piracies, the British agreed in return for similar concessions not to entertain in their service the subjects of Kolhapur, and to restore any fugitive slaves to it. In 1792 the Maratha version of another treaty with the same state was treated as the original, whereas in later times the

English document was referred to as authoritative, in the event of any dispute as to the meaning of the parties. When the Triple Alliance against Tipu Sultan was in 1790 reduced to writing, reciprocity was the spirit in which it was drawn. Due attention was to be paid, in the event of acquisitions, "to the wishes and convenience of the parties"; a representative of each signatory was to reside in the army of the other, and "the representations of the contracting parties to each other shall be duly attended to." If peace was judged expedient, "it shall be made by mutual consent."

Gradually both the spirit and the form of the Company's engagements changed, and before the close of the first period of their intercourse with the Native states their mutual relations stood as follows. The Company had advanced from the position of *primus inter pares* to an assertion of superiority. It required its allies to surrender their rights of negotiation with Foreign nations and with states in alliance with the Company, but it still left them with full powers of dealing with certain other states in India, which were specially named, as in the case of the Rajput and Sikh states. It recognised their right, except in Oudh and a few other cases, to maintain such armies as they pleased, and only sought to compensate the balance of their military organisation by subsidiary forces placed under the Company's control. With the internal sovereignty of the states, except under special circumstances as in Kutch, the Company not only did not pretend to have, but it formally disavowed, any manner of concern. Its external policy was dictated by military necessity and fear of French intrigue. It therefore placed restrictions on the rights of its allies in making war or alliances, and

imposed on them certain military obligations, and the duty of excluding from their service British subjects and the subjects of European powers at war with the English. But, as yet, the principle of subordinate isolation and co-operation was not unreservedly asserted. The Peshwa's sovereignty was impaired, but not formally resigned, and so far as it was consistent with the limitations placed upon the independence of the country princes, the forms and spirit of an international tie were still preserved. Old-fashioned methods survived in negotiations with the king of Oudh to a later date than in the case of other chiefs. In this respect the paper addressed by Lord William Bentinck, on the 31st of October 1831, to the King, the one remaining sovereign in India to whom were still accorded full diplomatic honours, stands out in marked contrast with other treaties or engagements of that date. The reiteration of the words "reciprocal" and "mutual" throughout the document is evidently designed as a set off against the tone of ascendancy in which even the king of Oudh was then addressed. It will suffice to quote a few sentences from this correspondence which recalls the flavour of the earliest treaties negotiated by the Company. "In these days of auspicious commencement and happy close, while the sound of rejoicing has gladdened the firmament, a meeting has been arranged at a fortunate moment and under favourable circumstances between the heads of the two exalted Governments, on the terms of reciprocal friendship, and in all cordiality, with reference to the relations established of old between the two states, and many interviews have been held with mutual satisfaction; the rosebuds of our hearts on both sides having expanded." "Your Highness may derive

satisfaction from the assurance that, agreeably to the relations of friendship as settled by reciprocal engagements." "All the authorities will study to maintain the relations which exist as established by mutual engagements—so as to display to the world the standards of the mutual good faith and cordiality between the Governments." The same note was struck seven years later in the treaty of the 26th of June 1838. "Each party shall address the other on terms of equality," was the sixth article of that tripartite agreement, which reads like a leaf taken out of the treaties of the preceding century.

§ 35. The subsidiary forces, to which Lord Wellesley devoted his particular attention, mark not only the pressure of common defence, which was never relaxed before the administration of Lord Hastings, but also the contrast between a policy of non-intervention and a policy of union. The system of subsidiary forces and that of Imperial service troops stand in marked contrast to each other, with an interval of a century between them. In each case the military policy is suited to its historical environment. The first treaty which introduced the plan under which the Company engaged "to have a body of their troops ready to settle the affairs of His Highness's Government in everything that is right and proper" was the Hyderabad Treaty, dated the 12th of November 1766. At that moment His Highness was contemplating the invasion of the Carnatic. With the Carnatic, Tanjore, and Oudh somewhat similar arrangements were made. To Travancore in 1795 the Company agreed to furnish three battalions of Sepoys, besides European artillery and Lascars, and laid down rules as to the manner in which requisitions for their services were

Treaties creating subsidiary forces.

to be made. Lord Wellesley succeeded in extending the system to Mysore in 1799, to Baroda in 1802, and to Poona and Gwalior in 1804. Indore, Cochin, and Kutch were included in the scheme by his successors. The troops so provided by the Company were paid for by the states for whose protection against foreign attack they were intended. But inasmuch as punctuality and good faith were not conspicuous in the acts of the Native chiefs, security for the payment of the troops was obtained by the cession to the Company of territory yielding the requisite ways and means. Engagements of this character were not popular with the states concerned, but they were characteristic of the period. The allies looked upon the troops as a menace to their independence, whilst their subjects felt the continual pressure of a force that might be used to suppress their revolt against misrule. The timely assertion of the duty of protected states to contribute according to their resources towards the cost of common defence as a condition of protection, and to keep their own forces down to a point which would disturb neither their own government nor their neighbours, would have rendered the subsidiary treaties unnecessary. But Indian society was not yet prepared for that principle. In the same way, a policy of union and of encouraging the states to maintain a small force of their own, ready to take the field in line with the Imperial troops, would have been premature in the atmosphere of mutual distrust which prevailed in the first period of British intercourse. The whole history of the Mysore wars explains why the Company was gradually forced into an attitude of mistrusting its allies. The scheme of subsidiary forces thus illustrates the essential characteristics of a period during which

wars were frequent, the ascendancy of the Bri only imperfectly established, and large tracts of il. defined foreign territory lying on the other side of the Company's boundary fence left blank on the Treaty map.

CHAPTER IV

THE POLICY OF SUBORDINATE ISOLATION

Material changes in the Treaty map between 1813 and 1857.

§ 36. A period of history is now entered upon during which the Treaty map of India was completely altered, and the main features, with which the present generation is familiar, were introduced. The British protectorate was extended by Lord Hastings, and his successors in office up to 1857, to all parts of the country lying south of the Himalayan wall, and enclosed between the spurs and chains thrown off from that mountain range and the seas that wash the shores of India. But this was not the only change. The large, indefinite blocks of Foreign territory left by Lord Minto, with no external frontiers delimited and no internal divisions fixed, were now brought under elaborate settlement; and the multitude of principalities, which still claim separate and direct relations with the British Government, were classified and protected. No doubt can be thrown on the depth and sincerity of the convictions entertained by Lord Cornwallis, the chief advocate and director of the policy of non-intervention. But had he lived to see the outbreak of the Pindari war, or the collapse of the imposing system of rule, rather than of government, created by the genius of Ranjit Singh, he must in the end have admitted its failure. When

Lord Cornwallis returned to India in 1805, he was given the opportunity of reviewing his theory by the light of the changes introduced by Lord Wellesley; but at that time he was unwilling to modify his views. He objected to the chain of subsidiary alliances which Lord Wellesley had forged, on the ground of the responsibility they involved for defending and laboriously propping up what he called impotent or unruly princes. He found fault with the extension of British alliances as retarding the natural development of stronger organisations, and he was prepared to view with satisfaction the absorption of the smaller chiefships in large kingdoms ruled by independent sovereigns in international relations with the British Government. In this policy he miscalculated the conditions of Asiatic society, and overlooked the consideration that Empires must rest on moral foundations. He forgot that the civil wars which had disturbed the country for so long had left rulers without any sense of faith or responsibility, and the ranks of society without discipline or cohesion. If order could be restored by force, it could only be maintained by a succession of competent rulers; whilst the development of good and progressive government required the counterpoise of a Church, a nobility, or free institutions, of which, except in the Punjab, hardly any germs existed. If despotism was the only possible form of Native government, it was essential that it should be beneficent; but the immoral influences of the Zenana, and of a Court surrounded by flattery and intrigue, were destructive of a wholesome "tone of empire," and opposed to the idea of any duty or mission. Alternations of violence and weakness, with a continuity only in repressing the growth of social or political organisation amongst

the people, were not calculated to realise the dream of Lord Cornwallis, that strong and friendly nations might be created beyond the territories enclosed by the Company.

In 1813 Central India, with its 145 chiefs who now have engagements with the British Government, and Rajputana with its 20 sovereignties, filled an undefined vague space on the map, within which "stronger organisations" were left to absorb and consolidate. The results we shall presently see in reviewing the outburst of the Pindari war. The country beyond the Sutlej was already the scene of conquest and reconstruction. Multan had been attacked, although it was not taken until after 1813; Kangra and the Hill Districts had been conquered, if not then annexed to Lahore; and most of the Sikh *Misls* north of the Sutlej already acknowledged the iron rule of Maharaja Ranjit Singh. Before his death on the 27th of June 1839, the Sikh Empire was an established fact built up on intrigue, treachery, and severity, but held together by a strong tie of religion which was wanting in the Pindari hordes, and which in the case of the Maratha confederacy was weakened by caste. Yet the Punjab state could not survive the imbecility of Kharak Singh the Maharaja's son, the vices of his grandson Nao Nihal Singh, and the debauchery of Maharaja Sher Singh. No better field for the realisation of Lord Cornwallis's dream could have been selected than the Punjab. The experiment of a strong organisation was tried, under every condition of success, in a tract of country where the Company's frontier was defined by a river, and at a time when the house of Delhi and the Marathas were reduced to impotence, while Afghanistan was occupied with its own affairs. But the policy of non-intervention

and of avoiding political settlements broke down in the north, as it did in the centre of India, with the result that the whole map of India was filled in with protected states, and the area was parcelled out into a vast number of principalities both large and small.

§ 37. The decisive events which occupy the largest space in the chapter of history opened in 1814 and closed in 1856, are the Pindari war and the Sikh wars. But it is convenient, before giving an account of them, to cast a rapid glance at the general setting of events prior to the Mutiny, so far as they bear upon the subject of political intercourse with the Native states. Excluding two short interregnums, nine Governor-Generals held office in this period. Lord Hastings, who negotiated more treaties than any other ruler of India had even discussed either before or after 1813, held the reins of Government for ten eventful years, which witnessed the Nepal war, the so-called Pindari war, and the last Maratha war. He rescued from the wreck of the Peshwa's sovereignty a new principality of Satara, whilst out of the rest he built up the Presidency of Bombay, to which Sind was afterwards added. Lord Amherst, who succeeded him, carried the British protectorate across the Bay of Bengal, and by the Treaty of Yandabu, dated the 24th of February 1826, brought Avan and Burmese politics within the field of the Company's control. Jaintia had been protected in 1824, and by the Avan Treaty Manipur was recognised as outside the sphere of Avan politics. The Governor-General's interference in the disputed succession at Bhartpur accentuated a principle which was recognised in the case of Indore in 1844, and which was prominently recalled to public notice after the Manipur disaster in March 1891. Lord William Bentinck followed, and

A general view of the period.

at first sight his long administration, famous for its administrative and internal reforms, seems to require attention only in connexion with his intervention to terminate gross misrule in Mysore in 1831, and with his annexation of Coorg in 1834, "in accordance with the unanimous wish of the people." But in reality his tenure of office contributes an important chapter to Indian political history. He not only abolished suttee and other barbarous practices, but he thereby added a new set of political duties, which, derived from the law of nature or the requirements of civilisation, affected British relations with every Native state. From his time certain Eastern customs were officially proclaimed as intolerable, and states which claimed union with the British Government in the interior of the Empire were pressed to take the same view of them. At the outset this obligation was made the subject of special agreement, but in all cases the law of custom and usage has now engrafted on the political theory of the Indian Empire the principle that British protection involves the abandonment of inhuman practices condemned by the common sense of civilised communities.

Lord Auckland's intervention in Afghan affairs lies beyond the scope of a review of the relations subsisting between the British Government and the states in the interior of India; but Lord Ellenborough, who succeeded him, annexed Sind, leaving, however, within the British province the Native state of Khairpur. He also brought to a final issue the question of Sindhia's right to maintain an army at a strength which might prove a source of danger to himself and of embarrassment to his neighbours. Beneath the policy of isolation the principle began to be observed that each separate state was one of a

family, and that a common defence and a common welfare were objects deserving of attainment. Upon Lord Hardinge, who was appointed in 1844 to the post of Governor-General, devolved the conduct of the first Sikh war, which ended in the admission of the Lahore state into the Indian protectorate. But the final collapse of Ranjit Singh's fabric of empire, which had seemed so splendid a proof of the sagacity of those who had advocated a policy of inaction, was absolute; and a measure which might have succeeded in 1809 was in 1845 rendered ineffective by the hopeless ruin of the country of the Five Rivers under its own native Government. It was too late to correct the evil without an entire change of administration. The Council of Regency was as impotent to restrain the military power of the Sikhs as the successors of the Maharaja Ranjit Singh had proved themselves to be. It fell to the lot of Lord Dalhousie to avenge the murder of two British officers at Multan, to crush the Khalsa, and annex the country. To the Provinces of Arakan and Tenasserim, acquired by Lord Amherst, he added Pegu as the fruits of the second Burmese war; and inspired by his experience of Punjab administration with a firm conviction that the good of the people could only be advanced by the direct rule of the British Government, he did not hesitate to annex Satara, whose Raja died without male issue in 1848, Nagpore, where the last of the Bhonslas died under similar circumstances in 1853, and Oudh, whose rulers had failed to act up to their solemn engagements and, in the words of the Governor-General, had carried on an administration "fraught with suffering to millions."

The period under review fitly closes with these annexations, which were the final legacies of a policy

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of non-interference and of misapplied theories as to the "independence" of the Indian allies. Had the British Government interfered before 1856, as it has frequently done since the Mutiny, and punished grave misrule, as it does now, by the deposition of the incompetent ruler and the temporary attachment of his state, there would have been no necessity, in some of these instances at any rate, for punishing a breach of engagement by annexation. Other considerations than the suffering of millions might have compelled the paramount power in performing its duty of common defence to occupy territories, such as Sind, exposed to invasion. But for misrule in the interior of the Empire a less drastic remedy than escheat would have served all purposes and been less open to misconstruction.

Lord Hastings' administration.

§ 38. This brief outline of the historical framework, in which the political engagements of the period ending in the Mutiny were set, will repay fuller examination. In particular the administration of Lord Moira, better known as Lord Hastings, deserves attention, not merely because it extends through the ten most important years in Indian history, but because a new departure was taken by him. Opposed as he evidently was to annexation, he felt that the proper position of the states in the interior of India was one of isolation and subordinate co-operation; and at the same time he realised the fact, that it was the duty of the paramount power to make a political settlement in the distracted areas of Native territory, and not to leave India to stew in its own juice. He had no faith in the dream of Lord Cornwallis that the stronger organisations would incorporate the petty states and become good neighbours of the British; whilst at the same time he did not, with Lord Dalhousie, hold that

the good of the people required annexations. In the rest of this chapter the progress and results of his administration will be sketched. The Burmese and Afghan wars, under the policy of isolation which he established, could not affect the protected states within the frontiers of India, and their influence on the political history of British India needs no minute inquiry. On the other hand, the annexations, commenced by Lord Bentinck and completed by Lord Dalhousie, as well as the downfall of the Sikh rule, led to the application of a new principle to the conduct of political relations, and these events will be considered in a separate chapter.

§ 39. The Earl of Moira had hardly assumed office when he was called upon to settle a difficulty on the Northern frontier, which the pacific dispositions of his predecessors had studiously avoided. Lord Wellesley, under the pressure of reaction against the vigour of his policy, had in 1804 dissolved his alliance with Nepal, and thus escaped the alternative of enforcing its terms. From that time constant violations of the frontier of the Company's ally, the Wazir of Oudh, were met with unavailing protest, until the hardy hillsmen, emboldened by impunity, and mistaking the leniency of their neighbours for timidity, annexed a British Zemindari, from which they were necessarily evicted by a British force despatched by Lord Minto. Then followed other aggressions; but, anxious to avert hostilities, the Company agreed to the appointment of frontier Commissioners to settle the various boundary disputes which during the past few years had grown into a long list. Their decision was adverse to the Nepal state, which, notwithstanding, evaded restitution. This left Lord Hastings no option but to support by

The Nepal Treaty.

force of arms his just demands. The campaign which followed was in no sense discreditable to the Gurkhas, and it even encouraged them to prepare for a renewal of hostilities; but it also served to convince them that their strongholds were not inaccessible to the Company's troops, and that it would be imprudent to push to extremes the forbearance of the British. The Treaty of Segowli, drawn out on the 2nd of December 1815, was accordingly, and after some hesitation, executed on the 4th of March 1816. Apart from the territorial cessions secured by it, the engagement excluded the intervention of Nepal in the affairs of Sikkim, forbade the employment or retention of British, or Foreign European, or American subjects in the service of the Gurkha Government without the consent of the Company, and provided that accredited ministers from each state should reside at the Court of the other. The treaty was one of mutual amity, and although it imposed restrictions upon the sovereignty of the ruling prince in regard not only to his foreign policy, but also as to his employment of Europeans, it granted reciprocity in the matter of accredited ministers, and generally presented a contrast to the engagements of subordination which Lord Hastings was soon to take from the states in the interior of India. The Nepal State, in fact, by reason of its peculiar relations to the Tibetan Government and its geographical position, stands outside the category of the dependent protected states of India. During the whole course of subsequent negotiations with it this distinction has been strictly observed, whether in the matter of jurisdictory arrangements made in 1839, and of extradition in 1855, or in the manner in which, in 1860, a portion of the lands surrendered by the Segowli Treaty was finally restored.

The exceptional status of this outlying territory is emphasized by the very different provisions of the treaty with Sikkim, dated the 10th of February 1817, which naturally flowed from the arrangement with Nepal. The Raja of Sikkim was obliged to surrender to the Company his sovereign functions of declaring war or making treaties, and to submit all his disputes to the arbitration of the Company.

The Pindari robbers.

§ 40. Having settled affairs on the Northern frontier of India, Lord Hastings was at last free to devote himself to the serious complications in Central India and Rajputana which threatened the Company's dominion. Once more history was to repeat itself. Self-defence had, in 1790, compelled the British to conclude the Triple Alliance against Tipu Sultan, after a bitter experience of previous invasions of their territories, and when his attack on the Company's ally, the Raja of Travancore, indicated a fresh attempt to wrest from them dominion. The ultimate consequences of Tipu's and his father's implacable hostility to the British Company were, as we have seen, the creation of the Madras Presidency as it still exists, and a series of alliances with Mysore, Hyderabad, the Peshwa, the Gaikwar, and other chiefs of the Maratha confederacy, drawing with them entanglements which would have ended sooner in annexation or political supremacy, if public opinion in England had not held back the Indian authorities. Self-defence was again the irresistible motive for action, but on this occasion public opinion did not stay the hand of the Indian authorities. The lesson taught by a succession of imperfect settlements and renewed conflicts in Southern India was too fresh in the public mind to be forgotten. Accordingly the consequences which flowed from the Pindari war were more decisive and far-reaching than

those that had followed the wars in the Carnatic. The Pindaris, unlike the Marathas or the Sikhs, were united by neither social nor religious ties. They were a community of human jackals, who herded together attracted by the love of plunder and murder. From all quarters appeals were made to the Company for protection. Even while the Governor-General was engaged in the Nepal war, the Pindaris had crossed the Narbada river, passed the valley of the Tapti, and returned along the Godavari laden with the spoil of defenceless villages in the Hyderabad state. In 1816 they appeared in Masulipatam, and their course was marked by the violation of women and the most brutal excesses. They inspired such terror in the minds of the people that the inhabitants of Guntur set fire to their houses and perished in the flames they had themselves kindled rather than fall into the hands of cut-throats so accomplished and desperate. From India lying outside the protectorate, from its protected allies, and from its own annexed Districts, the British Government received the most piteous appeals for help. The universal outcry compelled statesmen to review their policies and amend their worn-out phrases. It was soon recognised that the Pindari outbreak of savagery, dignified by the name of a war in history, was intimately connected with the policy of the ring-fence, and could not be suppressed without an abandonment of the principle of non-intervention. It was the product at compound interest of the Company's repression of disorder within its border, and of its policy of unconcern beyond its own possessions. The knot tied by Lord Cornwallis and his school must be undone before the Pindaris could be hanged as they deserved.

§ 41. Lord Cornwallis, as has been shown, was

The shelter afforded by states outside the alliance.

prepared to see the smaller states absorbed by stronger organisations. Central India and Rajputana were now destined to be the theatre of his grand experiment. By article viii. of the Treaty of Mustafapur, concluded with Sindhia on the 22d of November 1805, the Government of India engaged "to enter into no Treaty with the Rajas of Udaipur, Jodhpur, and Kota, or other chiefs, tributaries of Sindhia, situated in Malwa, Meywar, or Marwar," and "in no shape whatever to interfere with the settlement which Sindhia may make with those chiefs." By the Treaty with Holkar, concluded on the banks of the Beas on the 24th of December 1805, whither Lord Lake's victorious army had driven Jeswant Rao Holkar from across the Sutlej, the pacific Sir George Barlow had engaged "to have no concern with any of the Rajas situated to the south of the Chambul." Finally, the spirit of subsisting engagements with the Peshwa at Poona recognised his sovereignty; for, in the Treaty of Bassein, dated the 31st of December 1802, the preamble referred to the "several allies and dependants" of the two Governments; while, in article xiv., the British power half apologised, and sought confirmation, for its treaty with the Gaikwar, which "was meditated and executed without any intention that it should infringe any of the just rights or claims of His Highness Rao Pundit Purdhan Bahauder." Again, by the partition Treaty of Poona, dated the 14th of May 1804, the head of the Maratha confederacy acknowledged the sovereign title of the Honourable Company to the forts, territories, and rights of Maharaja Sindhia, which had already been "ceded by the Treaty of Sarje Anjengaon" after the crushing defeat of his forces by General Wellesley. Thus the Company had recognised the rights of its

allies to make what it was pleased to call "settlements," and had tied itself hand and foot by these several engagements. It had practically marked off a large tract of territory in the centre of India as lying outside its diplomatic action, and reserved as a playground for the forces of intrigue and disorder until its treaties were amended. It was, then, no matter for surprise that the soldiers of fortune, and the cut-throats and banditti of India, driven from the provinces governed by the British, or from the protected states in which a civilised influence had been established, should gather round the carcass in Central India, and join the standards of Amir Khan, Chitu, or any other leader who could promise them the spoils of civil war and the plunder of districts enriched by peace.

The Pindari and the last Maratha wars were thus indissolubly connected. The robber gangs who dared to raid upon the Company's territories and their allies could not be attacked without invasion of the area deliberately excluded from the protectorate. No partial settlement would avail. Order must be restored in the centre of India, and when established it could not be maintained without the recognition, nay more, without the creation of protected and isolated sovereignties. Gwalior and Indore were already written large on the Treaty Map of India. But Alwar, Dholpur, and Bhartpur, situated in Eastern Rajputana, in the neighbourhood of Agra, were the only Rajput states inscribed in the Treaty Book; and it was now necessary to write in the rest of the Rajput houses, and to parcel out the map of Central India. As the Emperor of Delhi's claims to confer titles had been abolished, so now the fiction of the Peshwa's authority must be summarily disposed of.

The Maratha confederacy had been broken by Abdalis at Panipat, but it was about to receive a greater blow from the diplomatic, as well as the military, power of the Merchant Princes. The Pindari disturbances were the occasion, rather than the cause, of the inevitable revolution, which was to shatter the policy of non-intervention, and to establish British supremacy in the heart of the Empire, as it had already, under the same stress of self-defence, been consolidated in the south.

The course of the political settlement with the Maratha powers.

§ 42. Negotiations were first opened with the Head of the confederacy at Poona. On the 13th of June 1817, His Highness the Peshwa concluded with Mountstuart Elphinstone a treaty by which he confirmed the Treaty of Bassein, undertook to deliver up Trimbukji, renounced all claims against the Gaikwar, and ceded lands in lieu of the Contingent. But the important clause for present purposes is article iv., by which he recognises "for himself, and for his heirs and successors, the dissolution in form and substance of the Maratha confederacy, and renounces all connexion whatever with the other Maratha powers, whether arising from his former situation of executive head of the Maratha empire or from any other cause." The states of Kolhapur and Sawantwadi, in Bombay, and the four great Maratha states of Gwalior, Indore, Nagpore, and Baroda were thus formally detached from the confederacy. Of them the most powerful was undoubtedly the state of Sindhia, and to his capital Lord Hastings, at the head of a powerful force, turned as soon as the close of the monsoon enabled him to move. On the 5th of November 1817 Sindhia signed the Treaty of Gwalior, which was ratified within twenty-four hours in camp by the Governor-General. "Whereas the British Government and

Maharajah Ali Jah Dowlut Rao Sindhia Bahadoor are mutually actuated by a desire to suppress the predatory power of the Pindarees, and to destroy and prevent the revival of the predatory system in every part of India," it was agreed that the two parties should pursue a concerted line of action. British garrisons were to be admitted into the forts of Hindia and Asirgarh, a contingent of 5000 horse was to be furnished at the Maharaja's cost, and his troops were to occupy certain fixed positions. Above all, the restrictions upon British intervention in Rajputana were withdrawn, and it was declared "that the British Government shall be at full liberty to form engagements with the states of Oudeypore, Jodhpore, and Kotah, and with the state of Boondee and other substantive states on the left bank of the Chambul." While this treaty was being signed, another for the consolidation of the Company's territories and for military co-operation was concluded with the Regent of Baroda. On the same eventful day the Peshwa at Poona shot his last bolt, and after a treacherous attack on the Resident, was defeated at Kirki on the 5th of November 1817. A few months later he was deposed and became a mere pensioner of the British Government. Appa Saheb, Raja of Nagpore, undeterred by this example fell on the Residency at Nagpore, and notwithstanding the immense disparity between the two forces was brilliantly defeated at the battle of Sitabaldi. On the 6th of January 1818 he was forced to sign a provisional agreement by which he was allowed to retain his throne until the pleasure of the Governor-General was known; and meanwhile he was obliged to leave the administration to ministers in the confidence of the Resident. On the same day Holkar signed the Treaty of Mandasor after a crush-

ing defeat at Mehidpur, and transferred to the British Government his supremacy over the Rajput chiefs. He was also obliged to recognise the engagement concluded with Amir Khan, to which attention must now be drawn, and to accept a position of subordinate isolation.

The Rajputana and Central India settlement.

§ 43. By these means Lord Hastings had for the time isolated Sindhia, who was obliged by the presence of a large force to accept the terms offered to him, and had reduced to flight or capitulation the Peshwa and his two allies at Indore and Nagpore. The Baroda state was of secondary importance, since its army was more likely to be a danger to itself than to its neighbours. Anand Rao Gaikwar, whose life was now drawing to a close, had some years previously been the prisoner of his own Arab mercenaries. After their reduction by a British force and the settlement of their claims to arrears of pay, he was at the mercy of palace intrigues, so that his policy was practically dictated by the British Resident. From the Marathas, then, there was little to fear, and the settlement of Central India and Rajputana was forthwith taken up with the accustomed vigour of the Governor-General. The Nawab of Bhopal, who had in vain sought British protection in 1809, and whose gallant defence of his city has already been mentioned, was dead. He had been forced by the policy of non-intervention to invite the Pindaris to his aid in order to repel the attacks of Sindhia and the Bhonsla. His son, Nazar Muhammad, was accordingly addressed by the Governor-General's representative, on the 13th of October 1817, in these terms:—"The British Government has now unalterably determined to suppress the predatory power of the Pindaris, and to destroy and prevent the revival of the predatory

system in every part of India. The British armies are advancing from every quarter into Malwa for this purpose. Every state must therefore declare itself either friend or foe. Those even who do not co-operate zealously in this cause will be viewed and treated as enemies." He was offered and accepted the British alliance; and, although he did not sign a treaty of subordinate co-operation until the 26th of February 1818, the admission of Bhopal into the protectorate dates from Lord Hasting's letter, written on the 23rd of December 1817, in which he was granted protection.

The next blow struck at the Pindaris recoiled upon Indore. On the 9th of November 1817 "*Nawab*" Amir Khan, as he was styled, the most conspicuous of the leaders of banditti, who had made such good use of the free hand granted to him by Lord Cornwallis and his successors that he now adopted the style of Nawab and claimed possession by force of arms of a large territory, was taken under protection on conditions of reform. To the lands so acquired from Holkar the Company added the fort and the district of Rampura, besides a grant of three lakhs of rupees, on condition that the new ruler of Tonk should give up his predatory habits, disband his ill-recruited army, submit his diplomatic relations to the guidance of the British, and place the residue of his forces at the disposal of the Company when required to do so. This he agreed to do, and his force of 30,000 men including several batteries of guns, as well as his own talents, were lost to the Pindari cause. It is unnecessary to pursue the fortunes of Chitu, who at one time commanded 10,000 horsemen, until he perished in the jungles, or those of Karim who surrendered

himself, or of the numerous disorganised bands of Pindaris which were cut to pieces and exterminated. The gravity of the Pindari war arose from the absence of any settled government in Malwa; and the progress of the political settlement, rather than the successes of the generals in the field, exterminated them for ever. Karauli was the first of the Rajput states taken under protection as the outcome of the Treaty of Poona. Kotah, which had suffered much from its tributary relations with the several Maratha houses, received protection on the 25th of December 1817. Jodhpur followed on the 6th of January 1818; and Udaipur, Bundi which by its position south of Tonk was able to render aid in cutting off the flight of the Pindaris, Bikanir, and Kishengarh, were written in on the Treaty Map in the order given. Jaipur, mindful, of the dissolution of its former alliance by Sir George Barlow notwithstanding the strong protest of Lord Lake, who knew the services it had rendered, hesitated to accept the protectorate. But the power of the nobles of the state who had usurped their Ruler's authority, no less than the example of the other Rajput states, overcame the scruples of His Highness in April. The chiefs of Partabgarh, Dungarpur, Jaisalmir, and Banswara were added to the protectorate before the end of the year. Of one other Rajput state not then in existence but now constituting a part of the Rajputana agency a brief notice may here be given. The chief of Kotah fell out with his minister Madan Singh, whose notorious father, Zalim Singh, was called by Tod the Machiavelli of Rajasthan. To avert a popular rising the state was divided, and a new principality of Jhalawar was created and conferred upon the descendants of Zalim Singh, being formally

admitted into the British protectorate in 1838. After the lapse of more than half a century the then ruler of Jhalawar was deposed for misgoverning his state, and while a portion of his territories was on his death without heirs restored to Kotah, the remnant was constituted a new state of Jhalawar, on the first day of 1899, under the rule of Bhawani Singh. The history of this principality thus illustrates both the paramount authority of the suzerain British power, and its resolute desire to avoid annexation or derive benefit for itself out of misrule or failure of succession in Rajputana.

In Central India the work of settlement proceeded with equal rapidity. The states of Dhar and Dewas were recognised as subordinate allies, and the integrity of Jaora was guaranteed in the Treaty with Holkar. But whereas in Rajputana Lord Hastings found it sufficient to recognise sixteen states, to which Lord Amherst added Sirohi, whilst Jhalawar, as already mentioned above and two other states were admitted at a later date, in Central India his settlement was far more minute and decisive. It was his policy to place every part of this large tract, in which civil and predatory war had obliterated all political landmarks, under some constituted authority; and thus from the wreck there emerged no less than 143 chiefships, which are now recognised and placed under the Governor-General's agent in Central India. With the chiefs in Bundelkhand, of which the best-known are those of Tehri, Datia, and Samthar, and with Rewa in Baghelkhand, British relations had already been established; but, now that the Peshwa had lost his share of sovereignty in that part of the country, their engagements, where necessary, were extended and supplemented.

The Gujarat settlement.

§ 44. The Pindari war, with the support which it received from the Maratha states, thus brought about the downfall of the policy of non-intervention, and left no room in the Map of India for the consolidation of the strong organisations to which Lord Cornwallis looked forward, except in Sind or in the remote Punjab. Lord Hastings had not only filled in Rajputana with treaties of subordinate alliance, but he had parcelled out the space allotted to Central India with a patchwork of jurisdictions. Into the details of the settlement of the mediatised states in Central India it is unnecesary to enter. Although sound policy suggested the establishment throughout Malwa of a succession of Rajput chiefships, as barriers to the revival of the Maratha sovereignty which the Peshwa had finally resigned in June 1818, yet the justification for acknowledging the rights and privileges of a multiplicity of states and chiefships rested on the fact that those who appealed to the British Government for protection in 1818 were quite as much entitled to what they claimed as the larger states. They accepted then the conditions of protection, and any other settlement that attached them to larger organisations, which they had so far successfully resisted, would have promoted general disorder, and encountered their resistance.

The principle of settlement introduced in Central India was next applied, in the Bombay Presidency, to the Gujarat states, and it also influenced British negotiations in Kutch. It has been shown that, by the Treaty of Poona, the British Government acquired in 1817 a free hand in its negotiations with the Baroda state. Besides this, it received from the Peshwa "all the territories and rights detailed in the schedule annexed to this Treaty, and His High-

ness expressly renounces all claims and pretensions of whatever description on the countries enumerated in the said schedule, and all connexion with the chiefs and Boomeas of these countries." The schedule contained this clause—"All the rights and territories possessed by His Highness Rao Pundit Purdhan Behauder in Guzerat, with the exception of Ahmedabad, Olpar, and the annual payment due by the Guickowar." The fifteenth article of the treaty repeated the fact that "the tribute of Kattiwar has been ceded to the British Government." The state of affairs which at this time prevailed in Kathiawar was obviously provisional. The Gaikwar held from the Peshwa a contract to collect the tribute due to Poona, and he also received certain revenues in his own right. Protected by the Company's treaties from molestation at the hands of the Court at Poona, and unable, owing to the mountains and jungles which separated him from Malwa, as well as to the weakness of his own position, to take part in the exciting contest for supremacy in Central India, the ruler of Baroda employed his army, not in the field against a public enemy, but in the tributary provinces against those who had a right to his protection. Every year his generals took the field with what was called the Mulkgiri army, and extorted what sums they could from the cultivators or proprietors of the soil. Regular lists of the chiefs, communities, or villages which had to pay tribute or Ghasdana were supplied to the commanders of the force, and to the sums thus due were added the expenses of feeding and conciliating the army quartered on the defenceless communities. In 1807 the British authorities, preferring to reform rather than abolish an established practice, had despatched a Commissioner into

Kathiawar with the Mulkgiri army to fix the revenue due, and to take from the Tributaries security bonds, called Fa'el Zamin, for their good behaviour and the maintenance of peace and order within their limits. The chieftains were at the same time required to give security for ten years for the punctual payment of their tribute. The maritime states of Porbandar and Nawanagar executed also in 1808 an engagement to renounce piracy. In 1817 the first obstacle to a more thorough settlement of Kathiawar was removed by the acquisition of the Peshwa's rights under the Treaty of Poona which has just been mentioned. It only remained for the Government of Bombay to restrain the Gaikwar from any interference, and this result was attained by the important Engagement, dated the 3rd of April 1820, to which Mountstuart Elphinstone obtained the adhesion of the Baroda state. It ran as follows:—"With the view of promoting the prosperity, peace, and safety of the country, and in order that the Guikwar Government shall receive without trouble and with facility the amount of tribute due to it from the Provinces of Kattiwar and Mahee Kanta, it has been arranged with the British Government that His Highness Syajee Rao Guikwar Sen Khas Kheyl Shumshez Bahadoor shall not send his troops into the Districts belonging to the Zemindars of both the above Provinces without the consent of the Company's Government, and shall not prefer any claims against the Zemindars or others residing in those Provinces except through the arbitration of the Company's Government." On the other hand the Company agreed to pay the tribute as fixed by the settlements, free of expense, to the Gaikwar. In the words of the Privy Council, given by Lord Selborne in the

case, Dámodhar Gordhan *v.* Deoram Kanji: "Since that date the supreme authority in Kattywar (as far as it had previously been vested in the Peshwa or the Guikwar) has been exercised solely by the British Government."

The British Government, having thus made themselves masters of the position in Gujarat now broken up into the four political agencies of Kathiawar, Mahi and Rewa Kantha, and Palanpur, proceeded on the same plan as in Central India to recognise the *status quo*. They had interfered to protect the petty chiefs from the aggressions of their powerful Hindu neighbour, and they were resolved not to incur the odium of annexing their territories to the Company's dominions. They determined to give the Maratha and the Rajput states proof of their power to respect the rights of others as well as to maintain their own possessions. The smallest states were, in their opinion, as much entitled to be preserved as the larger territories. In the language so constantly employed at that time the Court of Directors on July 20, 1830, determined to treat the Kathiawar tributaries "as independent chieftains entitled to the uncontrolled exercise of the power of government within their own territories, and subject only to the obligation of not molesting our subjects, our allies and one another, and of paying the stipulated tribute." This view was somewhat modified at a latter date, but the position was thus described in the words of the Joint Report, dated the 2nd of May 1865: "A great variety of persons and corporate bodies came to be treated as states, even villages, which hardly differed from their neighbours, which still remained under the Gaikwar's Government, except in the payment of a fraction of the revenue under the title of

Ghasdana." In Gujarat there was no question of high policy or of barrier states; and if Lord Cornwallis's plan had been carried to its logical conclusion, the stronger organisation of the British Government would have absorbed the whole of Kathiawar and the Mahi Kantha. But Lord Hastings maintained good faith and consistency. His successors have "laboriously propped up" the weak and numerous states in Gujarat. Every effort has been made to prevent their falling into the "vortex" of annexation. Superior Political Courts of Justice, not deriving their authority from Acts of the Indian Legislature, but from acts of state or the authority of the Executive Government, have controlled and assisted the Courts of the smaller states, whilst the larger states were for many years induced to entrust certain classes of cases in which they were personally interested to a federal, or Rajasthanik, Court, over which a British officer lent to them presided. By these means, and by help of the ready advice of the Political officers, some hundreds of petty states, added to the Treaty map under the influence of the settlements introduced by Lord Hastings, have to this day retained their semi-sovereign rights.

§ 45. The Kutch settlement was more difficult, and there are still questions not finally settled. If the problem had come up for solution at any other period of Indian history it is possible that it would have been decided differently. But, as matters stand, the British Government has given its guarantee to the nobles as well as the rulers of Kutch, and the differences between them have sometimes demanded the intervention of the suzerain power. The Jareja Rajputs immigrated from Sind into Kutch in the fifteenth century, bringing with them the system of

The Kutch settlement.

subdivision of fiefs amongst the Bhayad or younger brethren, analogous to the *frerage* tenure in France. The geographical insulation of Kutch, surrounded by sea or swamp, saved it from complications with its neighbours, and left it a field for the fight of internal faction or constitutional war. Thus it happened that the Company had no occasion to interfere, notwithstanding usurpations and rebellions, until 1809, when the suppression of piracy demanded their attention. In 1802 an offer of alliance had been made by Kutch but rejected by the British Government. In passing, it is interesting to recall two articles of the treaty then suggested, as illustrating some of the difficulties which by tact and discretion have been overcome in the progress of British negotiations. Article viii. ran as follows: "The English shall not kill the following animals sacred by the Rajah's religion—the cow, bull, calf, buffaloe, parrot, or pigeon." Article xii. added: "Mandvee being a sacred place, and those that live in it abstaining from animal food, the servants of the Company cannot dwell within the Town." But these were not the provisions which deterred the Company from the alliance. The British authorities honestly confessed their apprehensions that in the distracted state of the country their intervention would constantly be invoked if any alliance was concluded. In 1809, when the maritime states generally were being approached with a view to the suppression of piracy and the protection of shipwrecked crews and their vessels, Kutch was admitted into treaty relations; but even then, the engagement was taken not merely from His Highness the Rao, but also from his rival Hunsraj, who ruled independently in Mandvi. As might have been expected from a community so

distracted the engagements were not kept. While protests were being made the Rao died, and after the death of his successor, which occurred soon afterwards, a war of succession ensued from which Bharmalji emerged as victor. His cruelties and aggressions at last compelled Government to interfere, and the administration was for a season set right. But the Rao returned to his evil courses, murdered his cousin, and trampled on his nobles, so that in 1819 it became necessary to remove him in favour of his infant son Dessulji, who was the ancestor of the present Ruler. The Treaty of the 13th of October 1819 granted protection to the house of Dessul, bound it not to employ foreign mercenaries, and whilst guaranteeing the state against the introduction of the "civil and criminal jurisdiction of the British Government," added significantly that the "views of the British Government" extended to the "correction of any abuses which may operate oppressively on the inhabitants." The state accepted a position of diplomatic isolation and the duty of military co-operation. The practice of infanticide was to be abolished. But article xvi. contained the clause, inevitable under the circumstances described by Elphinstone on the 26th January 1821 "as the most difficult to dissolve, since to free us from its obligations requires the consent not of one Prince but of 200 nobles." Its terms were as follows: "The British Government, with the approbation of that of Kutch, engages to guarantee by separate deeds the Jareja chiefs of the Bhayad, and generally all Rajput chiefs in Kutch and Wagur, in full enjoyment of their possessions." The legacy which the British Government thus inherited, namely, the task of reconciling a strong Native rule with the pretensions of guaranteed nobles, was not self-sought.

Lord Hastings merely accepted the position as he found it, and if at the present day the establishment of the Jareja Court and the so-called "Settlement and Rules of 1875" have not completely solved the problem, the Kutch agreement illustrates a type of difficulty with which the early representatives of the British power had to deal, and proves their steadfast adherence to the principle of maintaining the *status quo* in their settlements.

Preservation of Native rule.

§ 46. The administration of Lord Hastings was equally remarkable for the wars he fought, for the treaties he negotiated, and for the settlements he made. But it is often forgotten that he was a King-maker as well as a Treaty-maker, and that he saved more than one state from annexation. In 1819 he raised the Wazir of Oudh to the dignity of King, thus announcing not merely that the ruler of Oudh no longer held his title from the Emperor of Delhi, but that the British Government, which had pensioned the Emperor and suppressed the sovereignty of the Peshwa, could bestow a kingly title. He also, by his Treaty of Perpetual Friendship and Alliance, dated the 25th of September 1819, invested the Raja of Satara "with a sovereignty sufficient for the maintenance of his family in comfort and dignity," by conferring on him part of the territories conquered from the Peshwa. Yet even here, true to his policy, he placed the Raja in a condition of isolation and subordinate co-operation with the British Government, interdicted intercourse with all persons not subject to his authority, prohibited any unauthorised alterations in the strength of his army, and guaranteed the subordinate chieftains or Jagirdars. In Nagpore he deposed the rebellious Raja, at the same time recognising the succession of a minor Raghoji, with whom,

however, no treaty was concluded until Lord Hastings had retired from office. But the preamble of the treaty concluded by Lord Amherst reveals the views entertained by Lord Hastings, and illustrates his policy of avoiding annexations and confirming the *status quo*. "Whereas during the subsistence of the Treaty" (of the 27th of May 1816) "in full force, in violation of the public faith and of the laws of nations, an attack was made by Rajah Moodhajee Bhonslah on the British Resident and the troops of his ally stationed at Nagpore for the said Rajah's protection, thereby dissolving the said Treaty, annulling the relations of peace and amity between the two states, placing the state of Nagpore at the mercy of the British Government and the Maharaja's Musnud at its disposal," yet, so the document proceeds, the British Government recollected its former close alliance, and replaced His Highness on the Musnud. In Poona there was no alternative open to Lord Hastings except to break up the headquarters of the confederacy by annexation. But elsewhere he treated the conquered chiefs of Indore, Gwalior, and Nagpore with every possible leniency, whilst he left Oudh as he found it. His settlements built up the Rajputana Agency, divided Central India into peaceful blocks, and preserved the pettiest chiefs in Gujarat from fear of annexation. When he left India, the principle of subordinate isolation and military co-operation was established everywhere, and within the interior of India the Provinces of Sind and Punjab alone remained outside the British protectorate.

The type of Lord Hastings' treaties with existing states.

§ 47. Before proceeding to the events narrated in the next chapter, which completed the map of India proper, it is necessary to describe the main features of the policy of subordinate isolation and co-

operation which Lord Hastings introduced. Whether one compares the terms in which he created a state with those employed by his predecessors, or the conditions on which he admitted existing states into the British alliance with those granted by preceding Governor-Generals, or examines the forms in which his engagements were cast, the stamp of his originality and individuality is visible everywhere. To every attempt to mark off epochs in the course of history, the objection may be taken that the shadow of an approaching change is visible on the pages which describe the end of the old order, whilst the fading rays and phases of a policy that has set are for a while reflected on the text of engagements that belong to a new era. Lord Wellesley had in part anticipated the direction which his successor took, but between his treaties and the engagements of Lord Hastings there is a marked difference. The treaty given by Lord Wellesley to Alwar, the Rajput state which assisted Lord Lake in the Maratha war in 1803, when read with the treaty concluded in 1818 with the greater Rajput state of Udaipur by Lord Hastings, is full of contrast and instruction. The Alwar Treaty recited in article i. the establishment of permanent friendship, and in article ii. recorded the agreement that the friends and enemies of one party shall be the friends and enemies of the other. With this veiled, and almost Roman, expression of protection, it proceeds in article iii. to give a guarantee against interference or the demand of tribute from the Maha Rao Raja. In article iv. the Raja agrees to help the Company in case of attack with his whole force. Article v. goes no nearer the deprivation of rights of negotiation than the following phrase: "If any misunderstanding should arise

between him and the Circar of any other chieftain, Maha Rao Rajah will, in the first instance, submit the cause of dispute to the Company's Government, that the Government may endeavour to settle it amicably. If, from the obstinacy of the opposite party, no amicable terms can be settled, then Maha Rao Rajah may demand aid from the Company's Government." The article just quoted can only be contrasted with the corresponding articles of the Udaipur Treaty, dated the 13th of January 1818, which is a document typical of Lord Hastings' treaties. After declaring perpetual friendship, alliance, and unity of interests, article ii. unreservedly and shortly announces: "The British Government engages to protect the principality and territory of Oudeypore." In return, article iii. with similar precision lays down the obligations of the Chief: "The Maharana of Oudeypore will always act in subordinate co-operation with the British Government and acknowledge its supremacy, and will not have any connexion with other Chiefs or States: "Obviously, with the *jus commercii* cut off, no misunderstanding should arise. But Lord Hastings was not satisfied. Article iv. again prohibits any negotiation with other states without the sanction of the British Government. Isolation was the keynote of his policy. Article v. also stands out in contrast with the corresponding article in the Alwar Treaty: "The Maharana of Oudeypore will not commit aggressions upon any one, and if by accident a dispute arise with any one, it shall be submitted to the arbitration and award of the British Government." Nothing is said about the procedure or the endeavours of the Company. The dispute will be carried to them, and settled by them whether the award is in favour of

or against the Maharaja. Article vi., dealing with the tribute, again repeats that "the Maharana will not have any connexion with any other power on account of tribute." Article vii. concerns a matter peculiar to Udaipur, namely, the restitution of territories taken from it by improper means. Article viii. embodies the military obligations of the state: "The troops of Oudeypore shall be furnished according to its means, at the requisition of the British Government." There is no qualification corresponding with the clause in the Alwar Treaty—"In the event of any enemy evincing a disposition to attack the countries now in the possession of the Honourable Company or of their allies in Hindoostan." The British Government has only to requisition Udaipur, and it will assist according to its means. Finally, the guarantee not to interfere is expressly qualified to exclude the intervention of British Courts: "The Maharana shall always be absolute ruler of his own Country, and the British jurisdiction shall not be introduced into that Principality."

Types of engagements creating new states.

§ 48. No doubt the action of time and of customary law has worn down the treaty of Lord Wellesley, as well as that of Lord Hastings, to a common value, but when they were fresh minted they represented different policies and different periods. The same contrast is to be observed in the title-deeds or treaties creating new sovereignties which were issued in the two periods of Treaty-making. Just as Lord Hastings saved Satara from the wreck of the Peshwa's sovereignty, so had his predecessor created Coorg from the wreckage of Tipu's dominion. The difference between the two agreements recording similar transactions is the difference between the spirit of the policy which

guided Lord Cornwallis and that of the policy which followed the Pindari war. It is also significant that Coorg was subsequently "annexed" as a punishment, whilst Satara "lapsed" only under the accident of the death of its ruler without male heir. The engagement with Coorg, dated the 31st of March 1793, recites the services rendered by the Raja, and the decision of Lord Cornwallis "to render him entirely independent of Tippoo, and to extend to him and his country the protection of the Company." It then binds the Raja to pay annual tribute, without a word as to his relations with other powers or his subordination to British counsels, and the Company agrees, "6th, that no interference was ever intended on the part of the Company in the interior management of the Rajah's country, trusting that a Prince possessing the most liberal sentiments will make the happiness of his people his most constant study." This vain and unlimited confidence was the rock on which the integrity of the state foundered in 1834. To the more important Raja of Satara, Lord Hastings, on the 25th of September 1819, ceded in perpetual sovereignty the newly-created state, but bound the Raja to hold it "in subordinate co-operation with the British Government, and to be guided in all matters by the advice of the British agent." Not only was intercourse with foreign states prohibited, but correspondence even with the Sardars and Jagirdars of the Deccan not subject to his authority was forbidden. "Entire management of the country" was ceded, but it was to be governed "with care and prudence." Extradition, forest rights, and commercial privileges were provided for, and the Treaty Jagirdars were guaranteed. The instances just given might be multiplied, but they are sufficient to indicate the

marked change of policy which Lord Hastings introduced. There is reason to believe that he looked forward to still greater progress in the improvement of relations with the British allies. To him was due the phrase of "subordinate co-operation," and although in his time such co-operation was limited to military requirements, and supreme insistence was laid on the isolation of the states, yet, as the Company's power increased, he would doubtless have laid less stress on isolation and given greater prominence to co-operation and union. But disappointed at his treatment by the Directors he left India in 1823, and his successors resumed the fetters of isolation and non-intervention in the internal administration of the states, until the Mutiny broke out, and presented a splendid opportunity for a fresh departure and the application of more definite rules to the conduct of political relations.

CHAPTER V

THE CONNEXION OF ANNEXATION WITH NON-INTERVENTION

Annexation the safety-valve of the policies of unconcern and isolation.

§ 49. The lesson taught by the Pindari war would have been incomplete without the chapter on annexation added by Lord William Bentinck and Lord Dalhousie. The annexations of ill-governed states, even more than the outbreak of organised plunder, proved fatal to the maintenance of the policy of isolation and non-intervention. Annexation was not a mere incident arising from the peculiar views of a single Governor-General, or from a temporary reaction against the king-making policy of a previous administration. It claims the magnitude of a distinct policy; and if a scrupulous avoidance of interference in the internal affairs of a multitude of isolated principalities was to remain an essential factor in the political system, then annexation was the only possible corrective. It needed a full appreciation of the danger of annexation, and the clearest proof that it must ensue if Native rule became synonymous with misrule, in order to convince the Chiefs of India, as well as the British public, that some change must be introduced into the relations of the protecting civilised power with its subordinate allies. The collapse of Coorg, Oudh, Satara, and Nagpore supplied the necessary

object-lessons; and when after the Mutiny annexation was dropped as impolitic, non-intervention fell with it. Thenceforward a new policy was pursued, and higher conceptions of co-operation and union, coupled with the personal responsibility of rulers, took the place of the more sterile policy inherited and improved by Lord Hastings.

Both the Company's officers, and the Chiefs themselves, were responsible for pushing the doctrine of non-intervention to the absurd limits which left no alternative but annexation. The former exaggerated the risk and the expense of attempting to reform abuses in neighbouring territories not directly under their rule. The latter claimed the divine right of governing their subjects as they pleased, and were convinced that the surrender of a single attribute of sovereign power would entail the loss of all authority. A few instances will illustrate the disinclination of the Government of India to exercise any interference however salutary. In Indore, in 1835, the Maharaja, Hari Rao, was pursued into his palace by a party of his discontented subjects, who sought to assassinate him and his oppressive Minister. But the Governor-General would not be moved from his attitude of unconcern. It was admitted by the Government of India that the administration of the Chief was to blame, but interference would require a prolonged treatment of the internal affairs of the state, and this, it was asserted, was inconsistent "with the position of His Highness and the policy of Government." Again, in 1853, the ruler of Bahawalpur, whose succession had been recognised by the British Government, invoked its aid against his brother. John Lawrence advocated interference, since it was difficult to see where disturbances would end, and the Nawab's

rival "in attempting to depose the *de facto* ruler was guilty of contumacy to the paramount power." But Lord Dalhousie refused to permit his trusted Chief Commissioner to intervene. The remedy, resorted to under altered policies, was in later years illustrated in Cambay, as shown in the Papers printed by order of Parliament. The Nawab was, on the 17th of September 1890, driven from his capital by an armed mob, who sought by these means to express their intolerance of the official acts of his unpopular Minister. His Highness applied for aid, which was granted on the express condition that the British "intervention must be accepted unconditionally by the Darbar." Order was established by a military force, and the Nawab was required to accept the advice and aid of a special Political agent, and to allow the British officer to carry out the reforms indicated. These two historical events are separated by the wide gulf that lies between the period before and the period after the transfer of Government to the Crown. When the appeals of Holkar and of Saadut Khan were refused in 1835 and 1853 respectively, the policy of non-intervention dominated the counsels of the British Government. When the appeal of Jafar Ali Khan Saheb was entertained in 1890, the policy of annexation had been condemned, and the new spirit of union between the Native chiefs and the British Government in India demanded effective and timely help to secure reform.

More frequently the allies, and not the Government, were to blame for the failure to intervene in season. Until annexation was recognised as the rock on which vicious and despotic rulers would inevitably drive the ship of state, and when as yet that danger was not finally removed by the new policy introduced

by the Viceroys, the subordinate allies of the Company tenaciously clung to the phrases of the earlier treaties, and resisted any sort of inquiry or assistance in their internal affairs. Their reluctance was natural. Even to the present day, when improved communication and education have done so much to bring the Native states into union with the Empire, the indigenous system of Government and the British system widely differ. It is true that in some well-governed states, such as Mysore, Baroda, and Kolhapur, there are several institutions and laws which find their counterpart in British India. But these states enjoyed for many years the control and guidance of British officials, and the restoration of Home Rule has to only a limited extent involved some reversion to the methods of administration that were for a time altered. There are even now but few Native states in which laws are made by a Legislative assembly after public discussion; and constitutional or legal checks upon the authority of the ruling prince and his minister are generally wanting. An immense improvement has taken place, but religious toleration and many other cardinal principles of Western governments are barely recognised. Interference on such matters is still resented. Before the Mutiny, the records of Native administration were darkened by the graver crimes of murder, cruelty, slavery, and corruption. It was not, therefore, a matter for surprise that the chiefs and their ministers held fast to any pledges which excluded the control of the British Government and the gaze of an enlightened public. They were in their own eyes wise in not coming to the light.

§ 50. But when a long course of gross misrule had actually ended in annexation, it was felt that temporary intervention and reform were small prices

to pay for the survival and rescue of Native rule. It therefore becomes necessary now to inquire by what means this lesson was taught to the states, and how to the British Government there came the conviction that a policy of absolute unconcern in the internal administration of their allies was as unsound as had been the policy of excluding many of them from the Treaty map. Two main objects of imperial concern have been put forward by Governor-Generals of India to justify their extension of British dominion,—the protection of the empire against invasion and the better government of the people. Sind and the Punjab were brought under the Company's rule because it seemed impossible to secure British India and the protected princes from external attack without effective control over the territories lying upon the Afghan frontier. Coorg and Oudh, on the other hand, were granted "the blessings" of civilised government, and the "sufferings of millions" were pleaded as an excuse for departing from a course of non-intervention which Parliament had declared to be repugnant to public interests. But the procedure adopted in each of these cases was strictly correct from an international point of view. War was declared upon Coorg, and the penalty of defeat was annexation. In the case of Oudh solemn treaties had been concluded by the King pledging his word that he would not oppress his subjects. His Majesty broke his engagements and paid the penalty due for the breach of them. When Lord Dalhousie proceeded with greater rapidity upon the path which his predecessors had trod, he sought the same object although he adopted different methods. The Court of Directors, in their Despatch of the 24th of January 1849, stated that they were "satisfied that by the general law and

Annexations prompted by Imperial interests.

custom of India a dependent principality cannot pass to an adopted heir without the consent of the paramount power," and "that the general interests committed to our charge are best consulted by withholding it." Military considerations first opened the door to annexation, and conceptions of improved administration extended the opening when the failure of treaties had led to no improvement. The "doctrine of lapse" provided an opportunity for securing better government without recourse to war and without waiting for the failure of treaties; and by its means Satara, Jaitpur, Jhansi, Sambalpur, and Nagpore were brought under a better rule. A fuller account of some of these annexations will serve to show how one step led to another, until the doctrine of lapse induced the British to revise their ideas as to non-intervention, and to ensure the continuance of Native rule by means of timely interference and control.

Imperial reasons for annexing Sind.

§ 51. Whether conscience, or mere humour, suggested to Sir Charles Napier the playful expression, *Peccavi*, in which, with a brevity that eclipsed Cæsar's more famous communication, he in 1843 announced his possession of Sind, the phrase has certainly influenced the judgment of history. It is generally assumed that the annexation of Sind did violence to the principles which elsewhere guided the Company's policy. Yet there is much to be pleaded in its defence. The dynasty, displaced by the battles of Miani and Dabha, had not only been raised to power by a rebellion of almost recent date against the lawful Governors, who held the province for the rulers of Kandahar, but, owing to divisions amongst themselves, the authority of the usurpers was soon disintegrated, and Sind was split up into three provinces. One of these provinces, that of Lower

Sind, had descended by the will of Nur Muhammad to four Mirs. The Lion of the Punjab was about to spring on the northern province of Shikarpur in 1836 when the Company interfered; and in 1838, by Lord Auckland's joint Treaty with Ranjit Singh and Shah Shuja-ul-Mulk, the Afghan ruler had agreed "regarding Shikarpur and the territory of Sind, on the right bank of the Indus, to abide by whatever may be settled as right." The British Government had therefore exerted itself to secure the Mirs against aggressions which they themselves could never have resisted. In 1809 the Company had entered into treaty relations with the Hyderabad family, and had concluded a commercial alliance with the Khairpur branch in 1832. It was therefore justified in expecting from the frontier states in Sind active co-operation and assistance when the prospect of war in Afghanistan presented itself. But such assistance was not forthcoming, and the Company had recourse to methods which previous rulers of India had been forced to adopt. For just as Akbar had found it necessary to annex Sind to the Empire in 1591, three years before he recovered possession of Kandahar, so again Imperial interests required an effective control over Sind when Shah Shuja was escorted in 1839 by a British army through the Bolan Pass, and still more when the disastrous retreat from Cabul in 1841 was about to be revenged. The terms of alliance offered to the Sind Mirs in 1842, including as they did the conditions of free navigation of the Indus, of the cession of territory in place of tribute, of control over the currency, and certain concessions to the state of Bahawalpur, may have been onerous, but they were not without justification. When once they were accepted, an attack upon Major Outram's force could

only lead to hostilities. The annexation which followed cut a knot that diplomacy had failed to unravel, and the history of subsequent years clearly established the soundness of a policy which avoided the dangers of divided control and misgovernment in a province that guards the most important of Imperial interests. No one can dispute the fact that if Sind had not fallen to the Company it must have been annexed either by Afghanistan or Lahore; and at any rate some wreckage was saved, for the protected state of Khairpur still enjoys its internal sovereignty and bears testimony to the moderation shown by the conquerors.

The policy of creating an independent Sikh kingdom.

§ 52. The story of the Punjab annexation is more complicated. Across the Sutlej nothing had happened which, up to a certain point, did not seem to justify the Company's foresight and to prove the sagacity of their political plans. When Clive gave back Oudh in 1765 in order to establish a buffer-state, the Khalsa had already fought a pitched battle against the Afghans, and the Chief of Patiala had been recognised by Ahmed Shah as Raja. In 1762 the Sikhs had conquered Sirhind. In 1805, when Lord Cornwallis drew up on paper his forecast of the political future of India, and looked forward to the realisation of his dream that stronger organisations would absorb the smaller states, Ranjit Singh, then twenty-five years of age, had acquired Lahore with the title of Raja, and was gathering the several *misls* or confederacies together into a strong empire. With full deliberation the Company had, by the Treaty of 1809, left His Highness the country beyond the Sutlej in which to consolidate his empire. When the Maharaja had overcome his first feelings of disappointment at the limitation imposed by the Treaty of Lahore upon

his encroachments, and had resolved to abide by it, he remained until the hour of his death, on the 27th of June 1839, the firm and loyal ally of the British Government. He viewed, indeed, with impatience the concentration of the British army at Ferozepore and the course of events in Afghanistan, but he never swerved from his alliance. A policy which is successful for three-quarters of a century may claim immunity from any serious charge of failure. Yet it may be doubted whether Lord Cornwallis, had he lived, would have regarded the Pindari war, or the Sikh war, as the greater disappointment and blow to his political schemes. The absorption by Ranjit Singh of the principalities, the tyrannical oppression of the Hindu and Muhammadan population of the Punjab, and the uncontrollable license of the army when General Ventura resigned in 1843, were the bitter fruits of the policy of isolation pursued in the North as they had been in Central India. Non-intervention eventually produced a death-struggle between the British and the Sikhs to which neither the Maratha wars nor the Pindari war bore any resemblance.

Contrast between the Sikhs, Marathas, and Pindaris.

§ 53. The three communities which in the second period of the Indian protectorate measured swords with the British differed from each other in many respects. In the fact that each of the three grew to power in a peculiar locality or geographical homestead, and in the rapidity with which they developed into hostile forces, they presented similar features. That they all exhibited bravery is also true; but, whilst the Sikhs had real military instincts and the patience to acquire, no less than the courage to apply, tactical knowledge, the Marathas though keen in warfare possessed only a strong predatory strain. The

Pindaris were reckless of life rather than courageous, and robbers rather than soldiers. The Marathas and the Sikhs reached the condition of a State; but the Pindaris, although they assumed that position when they offered their alliance to Bhopal, and though under Amir Khan they submitted to some degree of cohesion, were disorganised bodies of banditti rather than a community. The bond which united the Pindaris was greed of plunder, but the Marathas were held together both by social and religious bonds of union. At the same time, the disruptive influence of caste, to which the latter paid strict attention, maintained a separation which was fatal to common action whether in the field or in the council, and the Marathas resented reforms at home and the intrusion of improvements from abroad. With the Sikhs the religious tie was stronger than the social or the geographical tie. Their organisation, not being disintegrated by the fissures of caste, was welded together by the fervour of religious zeal and by the ever-present memory of persecution. The commonwealth and the army alike belonged to God, the word *Khalsa* signifying peculiar property or the property of God. Of the twelve *misls* or confederacies which Maharaja Ranjit Singh consolidated, one preserved the cherished associations and name of the Shahids or Martyrs. Their founder had been killed fighting against the Muhammadans, and the fanatical zeal of the sect instituted by him determined the issue of many an engagement. Other martyrdoms were the property and heritage of all Sikhs. Govind Singh, the Guru, had been forced to be the witness of the torture of his father by the bigoted Emperor Aurangzeb. Two of his sons were buried alive in Sirhind by the same Emperor, and he himself died a violent death when

a fugitive from home. His successor, Banda, was tortured to death at Delhi after being compelled to slay his own son. The baptismal rights and tenets of the Sikh religion fanned the spirit of retaliation, and when to a burning fanatical zeal were added the strong organisation introduced by the Maharaja, the military training of foreign officers like Ventura, Allard, and Court, who had served with distinction in European wars, and an army, which in 1845 numbered 72,000 men, with 381 guns, it can well be understood that a conflict with the Sikhs meant more than the extermination of the Pindari wolves, or the defeat in succession of the several divided members of the Maratha confederacy. Finally, the Sikhs were concentrated by the Treaty of Lahore within limits which they could fill with their zeal, whilst the Marathas were weakened by the expansion of their nominal rule beyond their power of control.

The collision, and annexation of the Punjab.

§ 54. The Sikh church militant, for such it was rather than a nation, had outgrown all restraints of law and order under the feeble rule of the Maharaja's successors; and when the crisis came its military efficiency was already impaired by the withdrawal of its European officers. Neither its military leaders who were constantly afraid of mutiny, nor the state officials who were obliged to make concessions to the soldiery for which they had not the means to pay, had any definite scheme of policy in their minds. They drifted, as more civilised states in modern times have also drifted, into "doing something," and surface currents decided what that something should be. The policy of non-intervention had left the British ill informed as to the full gravity of the situation; but expecting some news of disorder they leisurely reinforced their frontier

outposts. Bazaar rumour exaggerated the importance of these pacific movements, and further suspense or doubt was terminated by the Sikhs crossing the Rubicon, the river Sutlej, on the 11th of December 1845 in the hopes of cutting off Ferozepore from the succour being sent to it, and of then dealing separately with the Company's forces advancing from Ludhiana and Ambala. The Governor-General now appreciated the legacy of turbulence and fanaticism which his predecessors had bequeathed to him. Yet his Proclamation of the 13th of December 1845 fairly described the aims and intentions of the British Government in the past. It had been their earnest desire to see a strong Sikh Government established in the Punjab, able to control its army and protect its subjects. "The Governor-General in Council had not, up to the present moment, abandoned the hope of seeing that important object effected by the patriotic efforts of the chiefs and people of that country." No action or intervention on their part had justified the attack to which the British were now subjected. War was declared because these "violators of treaties and disturbers of the public peace" required punishment.

Not without supreme effort and after four pitched battles were the Sikhs driven back across the Sutlej, and compelled for a while to desist from further hostilities in the field. Lahore was occupied in February 1846; the infant Dhulip Singh was recognised, and whilst the Cis-Sutlej territory of Lahore was annexed, the administration of the rest was entrusted to a Council of Regency presided over by Henry Lawrence. By the Treaty of Amritsar, dated the 16th March 1846, Kashmir, which had been wrested in 1819 by the Maharaja Ranjit Singh from the Afghan Governor who had conquered it in

1752, was granted in subordinate sovereignty to Raja Ghulab Singh, the Hindu ruler of Jammu. This new Hindu sovereign had begun life as a cavalry trooper in Ranjit Singh's army, and had received Jammu from the Maharaja as a reward for an act of bravery. Elected Minister of the Khalsa, he took a leading part in the negotiations which followed the battle of Sobraon, and to him and the heirs male of his body was now granted "the independent possession" of Kashmir. It will be noticed in passing that this limitation of the tenure to his heirs male has a bearing on the question of lapse and adoption which was already engaging the attention of the Government of India. The Sikhs were dissatisfied both with the loss of Kashmir and with the inclusion of the Punjab in the map of the British protectorate. The Council of Regency were no more able to control the turbulent spirit of the Sikhs than the successors of Ranjit Singh had been. The assassination of two British officers at Multan in 1848 was the signal for another and final gathering of the Khalsa. The consequences of the death-struggle provoked by the Sikhs were fully appreciated by them. When they engaged in the bloody battle of Chilianwala, and finally met the British in February 1849 in the decisive contest of Gujrat, they knew that annexation would be the inevitable result of defeat. The parallel between the fall of the Marathas and of the Sikhs was then completed. On the 29th of March 1849 the Maharaja Dhulip Singh resigned for himself, his heirs, and successors, all right, title, and claim to sovereignty, just as the Peshwa had done before him.

§ 55. Yet a residue of Native states was left by the Company in the Punjab. As Satara was saved

States preserved from annexation in the Punjab.

from the fall of the Poona confederacy, so was Kashmir created in 1846 from the wreck of the Sikh empire. In 1809 the Cis-Sutlej states had been rescued from the grasp of Ranjit Singh, and the principalities of Patiala, Jind, Nabha, Kalsia, Faridkot, and Maler Kotla still bear testimony to the enduring efficacy of the Company's protection. The states of Kapurthala, Chamba, Mandi, and Suket came into the possession of the British Government in 1846, and were restored to their rulers. The terms granted to the three Rajas of the Rajput states of Chamba, Maṇḍi, and Suket deserve notice, as they prohibited alienation of their territories, and certain specified practices of slave-dealing, suttee, infanticide, and burning of lepers. The Hill states of Sirmur, Bashahr, and others, which after the Nepal Treaty of 1815 had been conferred on their Rajas by Sanad in that year, had by virtue of British protection preserved their integrity. The only other state in the Punjab which claims notice is that of Bahawalpur, whose ruler had sought protection against Ranjit Singh. In 1833 the Nawab had been granted a treaty of alliance, in which his control over his internal administration was guaranteed. In 1838 he was promised protection, and again assured that "British jurisdiction shall not be introduced into the principality." In 1850 the policy of non-intervention in internal affairs was carried to such a pitch that military action seemed likely to ensue, but despite all difficulties the position and dignity of the state have been perserved.

The lessons of the Coorg annexation.

§ 56. In its dealings with the state of Coorg, the British Government had no other object in view than to "secure to the inhabitants of Coorg the blessings of a just and equitable Government." The benefits

expected from the Company's rule were to be conferred on the locality, and Imperial interests were not otherwise concerned. Neither the safety of the empire from foreign attack nor the fear of disorder spreading into British territory demanded our interference. It is true that the inhabitants were hardy and warlike, but even at the present day the population has only risen to 180,600, and their geographical position, hemmed in by Mysore and British territory, rendered them a wholly insignificant section of the Indian protectorate. Accordingly, the wonder is that the Company thought it necessary to put a stop to the misrule which prevailed. But once they decided to do so, their extreme deference to the principle of not intervening in a Native state left them no alternative but annexation. A Native state, as they argued, must be exempt from interference in its domestic affairs so long as it remains a Native state. Scandalous misrule in Coorg must be suppressed by British interference. Therefore on these premises Coorg must cease to be a Native state. The vital connexion between the policy of annexation and the policy of non-interference was clearly established in the case of Coorg. There was unhappily no room for doubt as to the correctness of the two premises stated above. Not only were the policy of non-intervention and the corresponding idea of international relations generally accepted when Coorg was taken into "firm and perpetual friendship" in the middle of the first term of office held by Lord Cornwallis, but at the Raja's request he was formally assured in March 1793 that "no interference was ever intended on the part of the Company in the interior management of the Raja's country." The Raja, thus assured of his independence, and elated by the conversion of his

money tribute into a formal acknowledgment of allegiance, symbolised by the annual gift of an elephant, proceeded to assert his divine right to govern badly. It is true that he was subject to fits of insanity, but, up to his death in 1809, not even the insanity of a country prince could induce the Indian authorities to depart from their attitude of unconcern. His widow, who succeeded him, was deposed by his brother, who, until 1820, ruled like a Domitian. Upon his death Virarajendra Wodiar came to power, and improved upon the methods of his predecessor by playing the part of executioner, enjoying the pleasure of putting to death with his own hand his nearest relatives. The British Government, whose protection was invoked, proceeded to act in a correct manner according to international usage. It despatched a British embassy to remonstrate, a mission which of course failed. It then deputed one of its Native servants to reopen negotiations, but the Raja, deeming it an insult to be thus approached, put the emissary into prison. Even International law could not tolerate such treatment, and the British Government charged the chief with "a gross outrage upon the established rules of all civilised nations, by whom the persons of accredited agents are invariably held sacred." To this fine language the Raja replied by "letters replete with the most insulting expressions," and finally the Governor-General borrowed from the armoury of International law its last appeal. War was declared on the 15th of March 1834, in a formal proclamation against one who was "unmindful of his duty as a ruler, and regardless of his obligations as a dependent ally of the East India Company," and so, full of international honours as well as crimes, the Raja surrendered and

was pensioned. His country was annexed by the Government of India in a formal Proclamation, dated the 7th of May 1834, which was very significant of the views entertained by Lord William Bentinck. After reciting "the unanimous wish of the inhabitants of Coorg to be taken under British protection," the announcement proceeded — "The inhabitants are hereby assured that they shall not again be subjected to Native rule," etc. The policy of annexation is so often regarded as exclusively the outcome of Lord Dalhousie's views, that it is necessary to dwell upon the details of the Coorg precedent. The events just narrated show unmistakably that the Indian Government saw no other road to intervention in Coorg except that which would be open to them in dealing with an equal Nation in accordance with International law. They also afford evidence of the views entertained by the British authorities regarding Native rule. The Coorg people were guaranteed not against the oppressions of a particularly bad specimen of a Raja, but against subjection to Native rule. If this "Native rule," which could not be corrected save by a declaration of war, was radically bad, Lord Dalhousie was only carrying out the conclusions of his predecessors when he accepted the lapses which a providential failure of heirs provided. The mistaken view which prevailed as to the right of Indian sovereigns to govern as they pleased was not exclusively held by the Governor-Generals. It was shared by their masters in London.

The Directors refuse intervention to save Oudh.

§ 57. War in the name of humanity cut the knot in Coorg, but the kingdom of Oudh fell under the weight of its treaties. The inevitable result had long been foreseen, and when Lord Dalhousie was making up his mind to follow Lord Auckland's precept of

"abandoning no just and honourable accession of territory," he frequently cited the case of Oudh as illustrating the futility of treaties. For the King was often bound to govern his subjects properly, and his promises made no difference. To us in the present day the remedy seems obvious; the proper course would have been to set the King on one side for a season, and to have reformed the administration for him *bon gré mal gré*. But such a procedure would have shocked the scruples of officers who were pedantic students of International law, and had not grasped the truths that the continuance of Native rule was only justifiable if it were compatible with decent administration, and that an indigenous system of government would never be altered without more violent measures of intervention than protest. Thus, from the point of view in which the matter was regarded in 1856, the specific engagements of the King to govern well abundantly justified annexation, as being the final and only remedy for misrule which occurred to the directing authorities.

It has already been shown how Clive determined to create a buffer-state in Oudh, and how his successor enriched it with the spoils of the Rohilla war. The pacific Governor-General, Sir John Shore, pressed upon the Wazir in 1797 the necessity for reform, and in 1801 Lord Wellesley included in his Treaty of Lucknow, dated the 10th of November, an article (vi.) which secured for the Company exclusive control over certain territories ceded to them by the Nawab Saadut Ali, and as regards the residue laid down the following principles: "His Excellency engages that he will establish in his reserved dominions such a system of administration, to be carried into effect by his own officers, as shall be conducive to the prosperity

of his subjects, and be calculated to secure the lives and property of the inhabitants; and His Excellency will always advise with, and act in conformity to the counsel of, the officers of the said Honourable Company." The reservation, "to be carried into effect by his own officers," will not escape attention. It embodied the cardinal principle of the age, namely, exclusive administration by the Native state officials. Beyond that the wit of man did not go. If the Nawab's own officers could not carry out the advice given to them, one last remedy remained—annexation. There was no room left for misunderstanding on this point. The Nawab asked permission to discuss the treaty with the Governor-General, and his request was granted. The results of the conference were reduced to writing, and the Nawab put his case thus:—"The authority of the courts of justice, the adjustment of disputes, the redress of grievances, the observance of the civil and criminal punishments, and all other points connected with the administration of justice, must be conducted under my orders in the cities of Lucknow and Fyzabad, and in all the Jagirs in the same manner as in the rest of my dominions. For these things appertain to the Sovereign, whose duty it is to prevent every species of oppression." Again, as to advice, the Nawab argued, "If the Resident is desirous of withholding me from the prosecution of any particular measure, let him state to me his sentiments in private." The Governor-General in his reply gave the guarantee, "The system of administration is to be carried into effect by His Excellency's own officers and servants, and by his own authority." To these engagements and understandings no objection could be raised if the parties had been equal nations. It is a funda-

mental principle of International law that a nation both possesses and exercises exclusive jurisdiction and sovereignty throughout the whole extent of its territory. The modern theory of the divisibility of sovereignty, and the doctrine that a Native state in subordinate alliance with the British Government could be saved from annexation by the timely and direct intervention of British officers in its internal affairs, had yet to be learnt.

The Home Government and not the Indian authorities made themselves responsible for annexation by rejecting a remedy which was offered to them, when a revision of the Treaty of the 10th of November 1801 came under their notice. In 1814 Saadut Ali Khan died, but the Maratha power was not yet broken, and Oudh was still the buffer-state. Lord Moira simply reaffirmed the existing treaties and engagements with the new Wazir Ghazi ud Din; and the high consideration shown by him to the Company's creditor, exalted to the dignity of King, even aroused suspicions which were generally unjust. The King was wealthy and made loans to the Company, which they liquidated in part by cessions of some of the districts acquired from Nepal by conquest. History brings its compensations, and it may be incidentally mentioned that after the suppression of the Mutiny these lands found their way back to Nepal as the reward for its services in the suppression of the revolt in Oudh. Ghazi ud Din was succeeded by his son, who reigned for ten years, and lent more money to the Company; and then by his brother, Muhammad Ali Shah. On this occasion Lord Auckland proposed to alter the terms of article vi. of the Treaty of 1801. With much difficulty the King was induced, on the 11th of September 1837, to consult with the British

Resident on the subject of judicial reform, and it was provided that "if, which God forbid, gross and systematic oppression, anarchy and misrule, should hereafter at any time prevail within the Oudh dominions, such as seriously to endanger the public tranquillity, the British Government reserves to itself the right of appointing its own officers to carry out the necessary reforms." It was added that Native institutions and forms of administration would be maintained, "so as to facilitate the restoration of those territories to the sovereign of Oudh when the proper period for such restoration shall arrive." Oudh was no longer then a frontier state. Coorg had been recently annexed, and the lesson taught by the Pindari war had been well learnt by the Indian Government. The proposals of the Indian authorities were sound, and would have saved Oudh from annexation, at the cost perhaps of the deposition of an unworthy king; but the Home authorities feared the new principle, and the treaty was disallowed. This ill-considered opposition to the Indian Government bore fruit in due course, and nothing but annexation remained for Oudh and other principalities.

§ 58. The King was not informed of the fate of the treaty, but after his death matters remained *in statu quo* until his successor also had passed away, and Wajid Ali Shah ascended the throne. Each Resident who was sent to the Court of Oudh reported the same scenes of misgovernment, corruption, and oppression. It had fallen to Lord Hardinge to reap in the first Sikh war the harvest of a policy of inaction, and he foresaw that a further trial of strength in the Punjab was inevitable. Misgovernment in Oudh might add to the difficulties of the Company, and accordingly he proceeded to Lucknow in November

Annexation of Oudh carried out.

1847, and gave an ultimatum to the King, warning His Majesty that within the next twenty-four months reforms must be carried out. The two years passed by without any sign of amendment; but Lord Dalhousie's hands were for the moment too full of wars, in the Punjab and subsequently in Pegu, to give leisure for grappling with the difficulty in Oudh. The King reigned, and the people groaned. Meanwhile fuller reports were called for and received on the subject of the King's administration, and His Highness was at last offered a Treaty which he declined to accept. The document presented to him recited that the long toleration of misrule "exposed the British Government to the reproach of having failed to fulfil the obligations it assumed towards the people of the country," and it proceeded to guarantee to the King and his successors the honours of sovereign princes with an adequate endowment. But the sole and exclusive administration of the civil and military Government of the territories of Oudh was thenceforth to vest in the Company.

This indeed was intervention at compound interest, but general indignation had been roused by the tales of suffering which reached the public ear. Unfavourable constructions had long been put on the tolerance shown by the court of directors and their subordinates. In 1838 the *British and Foreign Review* had published an article which attributed their inaction to the loan transactions which have just been noticed. "We know that for years, though the voice of the people loudly called for British interference, when rebellion, robbery, and murder stalked through the country—when the revenue was not half collected, yet the people ground by excessive exactions—when property and life were quite insecure, the acts of the government

arbitrary in the extreme, and the army lawless and mutinous—that the Company's Government looked quietly on, and now and then lent its troops to put down those who had been driven to rebellion by the oppressions of the government. Why was this?" "Was it, as every Native in India says, that, because the Company was a large debtor to Oudh for sums borrowed through the Minister, it dared not refuse to support him in all his acts? We very much fear this to be the case." The writer was either unfair in his criticism, or more probably ignorant of the treaty which a year before had been negotiated by Lord Auckland, and which, if it had not been disallowed by the Home authorities, would have secured redress for the people with the continuance of Native rule in Oudh. Be that as it may, the reproaches which had been flung at the Indian authorities for many years gained force when Sleeman's report confirmed previous rumours. The only hope for preserving Oudh, even in name, lay in the submission of its ruler to the demand presented to him by Outram. Yet, it was no matter for surprise that the King declined to sign a treaty which deposed him. Even the Raja of Coorg had retired with the honours of International law. If the Company chose to conquer Oudh, or depose its King by an act of state, they might do so; but His Majesty Muhammad Wajid Ali Shah was not going to help the Company out of the false position in which they had placed the rulers of Oudh and themselves. Accordingly, the time allowed for acceptance of the treaty lapsed, and on the 13th of February 1856 the Governor-General made his tardy confession, and assumed the direct administration of Oudh, because "the British Government would be guilty, in the sight of God and man, if it were any longer to aid

in sustaining by its countenance an administration fraught with suffering to millions."

Lord Dalhousie's policy a natural sequence.

§ 59. The suppression of intolerable misrule in Coorg by the drastic method of conquest, and the prolonged failure of treaties and advice to cure oppression in Oudh go far to explain the attitude of Lord Dalhousie in dealing with Hindu dependent states when he was asked to "bolster up" Native rule by adoptions. They were the object-lessons which induced him to welcome lapses as cutting the knot which political practice had failed to untie. The rule which he followed in seven cases was thus stated by himself: "In states owing their origin to our grant or gift, if heirs fail, according to the terms of our grant we annex." In two of these cases, Satara and Nagpore, imperial considerations weighed with him. Although neither of these territories occupied positions on the frontier similar to Sind and the Punjab, they were placed right across the main lines of communication between Bombay and Madras, and Bombay and Calcutta. Consolidation was therefore to be secured by their annexation. But even in these two cases, and certainly in the rest of his annexations by lapse, Lord Dalhousie sought by extension of British dominion to improve the administration of the countries annexed, and to confer upon their people the blessings of law and order. Historians have not always done justice to the motives of the Great Proconsul, nor made allowances for his point of view. They have treated annexation as if it were his personal discovery, ignoring the precedent of Coorg, and the general continuity of policy which a system of government by a Governor-General in Council secures. In the second place, they have hardly viewed in the light it deserves the intimate

connexion of annexation with the doctrine of non-interference, and the rejection by the Court of Directors of the only alternative. Lord Dalhousie, or with greater justice the Court of Directors, may be reasonably blamed for not correcting the principle of non-interference; but it is unreasonable to condemn annexation, which was the logical and inevitable outcome of that narrow principle, without reference to the policy of which it was under the circumstances the only safety-valve or corrective. No civilised Government was justified in protecting, with its countenance and its armed forces, intolerable and continued misgovernment by its allied sovereigns. If the scheme of Native sovereignties did not admit of "suspension, or forfeiture of any of their governing powers," there was no escape from the situation, created by wilful and gross misrule, except the entire suppression of the sovereignty. And in such a situation a Governor-General who declined to sanction an adoption, which was required by the terms on which a Native state had been granted to a particular family, had at least justification for refusing to prolong a rule that had too often been fraught with misery to the subjects of the ruler.

§ 60. The morality and political expediency of the policy of escheat applied not only to Jhansi and Satara, but to other states before the rule of Lord Dalhousie, as to Mandvi in 1839, to Kolaba and Jaloun in 1840, and to Surat in 1842, must be judged by the considerations just set forward; but on the legal aspect of the case a few remarks may be offered. Hindu law requires that, in default of male issue, an adopted son should be engrafted on the family to save the father's soul from hell, *put*—hence the son is called *putra*. The religious obligation devolves on

The legal aspect of lapse or escheat.

the widow to provide an adopted son, should the father be unable to perform the ceremony before his death. The son so adopted is placed at once in the legal position of a natural heir, and inherits his father's property. But the Hindu law also recognises a fundamental distinction between private property and a chiefship. This division of private and public interests may be traced in the rules governing the partition of family estates, in which all sons have a share. They may even claim against their father a partition of the family property. But such is not the case where a chiefship is concerned. The public estate has to bear the burdens and fulfil the responsibilities of the kingly office. No administration could be maintained even in name were the partition and disintegration of the state permitted. The younger sons of ruling chiefs are therefore placed in a worse position than the sons of the private citizen. In dealing with adoption the same principle must, it is argued, be applied. Adoption, and succession to rule, are perfectly distinct. The widow of a chief may certainly adopt a son to perform the religious rites and services due to his father's *manes*. The son so adopted will have a right to succeed to any private property of his deceased father by adoption. But before he can succeed to the chiefship, the sanction of the superior sovereignty, which maintains by its protection the integrity of the state, must be obtained. The history of the Peshwa's dealings with his subordinate sovereigns can be cited in support of this view. Again, if it be true that the recognition of the British Government is required in the case of each succession to a dependent Native state, even where its existence as a state dates back before British rule, the case is far stronger where the British

Government either created the Native state, as Coorg, or Mysore, or regranted it after rebellion, as in the case of Satara and Nagpore. Such were the arguments which, in the opinions of the local and imperial authorities, rendered it perfectly just and equitable to dispose of Native states on the occurrence of the death of a ruling chief without male heirs of his body. It is noticeable that these reasons were not disowned by Lord Canning when, on the 6th of September 1859, he regranted Garhwal to its Hindu Raja, and expressly recited the fact that the "Chief having died, leaving no legitimate issue, the above territory has lapsed to the Government."

The Nagpore annexation and the new doctrine of personal responsibility.

§ 61. The argument as applied to Nagpore was undoubtedly strong, since neither a son of Raghoji nor any male heir survived him. The story of the annexation is easily told. After the rebellion of Appa Saheb and his defeat, he was required to sign the Provisional Agreement of 1818, to which attention has already been drawn. He broke his engagement and was arrested, but he escaped, and a new Raja was installed at Nagpore. The state was thus regranted to one who assumed the name of Raghoji. He conducted the administration until his death, when the territory was treated as an escheat, and was formally annexed. The Nagpore state included, however, certain petty chiefships, whose integrity had been guaranteed by the British Government at various periods in the course of its intercourse with the sovereign state. In a treaty, concluded in 1829, the late Raja had been bound to maintain inviolate "all agreements and engagements formed with the Gond and other tributary Chiefs and Zemindars by British officers." What was to become of these dependent chiefs now that the parent state,

under whom they held their semi-sovereign states, was annexed? The answer was honourable to the British, and instructive in its bearings on the matters discussed in this chapter. When the new policy which followed the Mutiny replaced the practice of non-intervention, it was found possible to maintain these Jagirs and estates as foreign territory or Native states. But the fiction that a Native state could not, in the event of misrule, be administered for a time on behalf of its ruler by British officers, was to be swept away. The engagements which, after the interruption of the Mutiny and the concession of Sanads of adoption, were taken from the Chiefs of Bastar and Khairagarh and thirteen others, contained this clause: "If at any time, through the misconduct of myself or my successor, my state should fall into great disorder, or great oppression should be practised, then I, or my successor, shall be liable to suspension or forfeiture of my, or his, governing powers." This was merely a reproduction of the clause by which Lord Auckland sought to save Oudh from misrule and annexation. It introduced the policy of personal responsibility: but, without the practical experience of annexation, so wide a departure from the traditional principle of non-intervention would probably have been deferred for another generation despite the prolonged "suffering of millions." When, however, both ruling princes and their protectors had realised that a rigid adherence to non-interference led the way to annexation, they readily welcomed a change of system which assured them alike of timely intervention and of the perpetuation of Native rule.

CHAPTER VI

THE POLICY OF SUBORDINATE UNION

Sketch of leading events in the Native states after 1857.

§ 62. The experiences gathered by a century of years following the victory at Plassey, with their failures hardly less instructive than their successes, were available when, under the operation of the Act for the better Government of India, Statute 21, 22 Vict. cap. cvi., the first Viceroy took under his charge the states, whose protection was henceforth guaranteed by the Crown. Between Lord Canning and the present time, and excluding temporary appointments, twelve Viceroys have borne office in the name of the Sovereign of Great Britain and Ireland. Striking as their administrations have been in the development of the material and moral progress of the territories transferred from, or since then added to, the Company's possessions, they have lacked the dramatic interest which marked the history of the Native states during the preceding periods when kingdoms were made and fell or were saved by admission into alliance or into the British protectorate. The Treaty map of India was already filled in, except on the extreme confines of the Empire: and if Afghan, Baluch, and Shan politics are still left out of view as lying beyond the scope of present inquiry, the remarkable incidents of British intercourse

with the principalities in the interior of the country during the last fifty years are but few. The Sanads of adoption conferred by Lord Canning were supplemented by Sir John Lawrence and Lord Lansdowne. The annexation of a Bhutanese district by the former in 1864, and the Sikkim wars of 1861 and more recent date, may be mentioned to be dismissed in a few lines. They avenged unwarranted aggressions on British soil, and in the case of Bhutan an outrage inflicted on the Envoy, from whom an engagement was extorted which was formally repudiated by the Government of India. But although British relations with Bhutan commenced with a tributary engagement in 1774, and those with Sikkim emerged from the events of the Nepal war in 1817, the geographical position of the two states places them almost out of the scope of this work; and the intervention of the Foreign Office has been limited to the promotion of peace and order on their frontiers.

Three events, occurring at different times and in widely-separated parts of the Empire, deserve notice as illustrating the right of the British Government to interfere in case of misrule, or for the regulation of disputed successions, as well as its earnest desire to preserve the integrity of the Native states. The deposition of the Gaikwar of Baroda by Lord Northbrook in 1875, and the selection of his successor; the transfer of Mysore by Lord Ripon in March 1881 to the present Maharaja; and the settlement of the succession in Manipur by Lord Lansdowne in 1891, have accentuated in the West, in the South, and on the North-eastern frontier of the Empire, the change of policy introduced by the first Viceroy. The proclamation of the Imperial title assumed by Her Majesty, Queen Victoria, under Act of Parliament,

Statute 39 & 40 Vic. cap. x., and the speech delivered on the occasion by Lord Lytton on the 1st of January 1877 at Delhi, called attention to the addition to the titles of the crown, "which shall be henceforth to all the princes and peoples of India the permanent symbol of its union with their interests." One common purpose was to unite them in the active promotion of the progress and welfare of the Indian populations. "Princes and Chiefs of this Empire," said His Excellency, "Her Majesty regards her interests as identified with yours; and it is with the wish to confirm the confidence and perpetuate the intimacy of the relations now so happily uniting the British Crown and its feudatories and allies, that Her Majesty has been graciously pleased to assume the Imperial title we proclaim to-day." The rendition to Sindhia by Lord Dufferin in 1886 of the Fort of Gwalior, stormed on the 3rd of August 1780 by Captain Popham, in the first Maratha war, and thereafter the subject of many negotiations and engagements, symbolised the fact that the "key of Hindustan," as the scarped rock was called, rested no longer in military positions held by the Company, but in the confidence inspired by the union of the Native princes with their paramount protector. The system of Imperial service troops developed by the same Viceroy marks a contrast to the subsidiary alliances of an earlier period, and concludes the enumeration of important events specially connected with the Native states which it is necessary to make.

§ 63. But it must be borne in mind that the policy, which, after the suppression of the Mutiny, was inspired by a new spirit of co-operation and union in antithesis to one of subordinate isolation,

Course of British administration now affects Native states.

has introduced the Native states to a higher position of responsibility as well as of honour. The history of the internal administration of British India no longer requires a chapter distinct from that which records the progress of political relations with the states. The protected sovereigns of the United States have been admitted as partners with the Government of India, not only in the defence of the Empire and in the output of its foreign treaties and its international activity, but also in the material and moral progress of the united country. The feature which distinguishes British negotiations with the country princes in the third period of their intercourse from those which preceded the Mutiny, is the larger attention given to matters of common welfare. Railways are extended through Native states from one British province to another. Famines are attacked by united action when they visit the land, or they are repelled by co-operative schemes of irrigation in which the catchment area, or even the heads of the canals, are found in Native territory. A war of tariffs and the maintenance of expensive customs-lines are avoided by the adhesion of the King's allies to a common fiscal policy. Public justice is improved by better systems of extradition, or by the recognition, as far as the imperfections of the Courts established in the Native states will allow it, of the judicial acts of the British and Foreign Courts. The waste involved in break of gauge in currency and trading transactions is reduced by common arrangement. Thus the spirit of co-operation and the idea of a common interest enter into the daily life both of the King's subjects and of those who owe allegiance to their own rulers. The engagements of the Native states, as they are stimulated

and quickened by the new spirit, are not only likely to be multiplied, but of necessity they must keep in touch with the advance of British administration. It follows, then, that the student of the relations subsisting between the Native states and the British Government cannot safely confine his attention to the internal history of each separate native sovereignty. The barriers of isolation are being broken down, and the rights and duties of the protected principalities gain strength and expansion from the closer union into which they have entered.

Lord Canning's Sanads removed mistrust and suspicion.

§ 64. The transfer of Government to the Crown by the Statute of 1858 was an event of signal importance, not merely in the results sketched above, but in the splendid opportunity it offered for effecting a striking change of policy. Cordial co-operation cannot thrive in an atmosphere of mistrust. The tide of rebellion had been rolled back, but the memories of recent escheats and annexations were not effaced in the clang of arms and the terrible scenes of the Mutiny. On the contrary, the very fact that the British power emerged from the struggle the one unquestioned paramount authority in the country, at the outset inspired some natural misgiving as to the intentions of the Crown towards the principalities placed in subordinate alliance with it. The country princes knew that restless activity dominated the administration of the United Kingdom. The progress of the Crimean war had been watched with keen excitement in every Indian Bazaar. Free Trade, the extension of education, constitutional reforms, and the development of swift communication with India, were known to be guiding principles of British rule. If the King of Oudh had lost his kingdom because he could not keep abreast of British

conceptions of a ruler's duties to his people, the Queen's allies might well fear that closer relations with Her Majesty's Viceroys would entail upon them an unlimited liability for improvement in their internal administration, which they could never meet.

Something was needed to reassure the princes and chiefs. Without a sound foundation of mutual trust, a policy of co-operation could never be carried out. Indian history afforded several instances of new departures and changes of policy, but they had been almost always followed by reaction. Lord Cornwallis and Lord Teignmouth had done their best to weaken and detract from the measures of Lord Wellesley; but Lord Hastings had completed the lines of the protectorate lightly traced by Lord Wellesley on the Treaty map. If now a parting of ways had been reached, and if Lord Dalhousie's interpretation of the doctrine of lapse was to be repudiated, there must be no mistake and no possibility of reaction. Accordingly, Lord Canning took a decisive step. He covered India with his adoption Sanads, addressed to all important Ruling Chiefs, assuring them of Her Majesty's desire to see their rule perpetuated. Into the terms of these Sanads it will be necessary hereafter to look more closely. Here, in pursuance of the plan adopted in this work, it will suffice to examine their historical setting. They announced a new policy; they associated in unequivocal terms the grant of a highly-valued concession with conditions of loyalty and subordination; and they created a basis of mutual trust and confidence upon which the new partnership might be established. The princes of India, assured of the royal interest in the welfare of their own Houses, might henceforth feel satisfied that any representations made to them as to the contentment of their

subjects were inspired by a genuine desire for their own personal welfare, which was no less an object of concern to the Queen. The concession was itself personal, and emphasised the fact that the ruler must personally exercise the right conferred; but, as Lord Canning himself wrote, it did not debar Government from interference, and even annexation if the conditions of the engagement were broken by disloyalty. The Sanads, thus distributed in order to reassure and knit the Native sovereigns to the paramount power, ran as follows in the case of Hindu Dynasties. The form was adapted to Muhammadan rulers, by altering the words after "natural heirs," as follows—"any succession to the Government of your state, which may be legitimate according to Muhammadan law, will be upheld."

Sanad

Her Majesty being desirous that the Governments of the several Princes and Chiefs of India, who now govern their own territories, should be perpetuated, and that the representation and dignity of their Houses should be continued, I hereby, in fulfilment of this desire, convey to you the assurance that, on failure of natural heirs, the adoption by yourself and future rulers of your state of a successor according to Hindu law and the customs of your race will be recognised and confirmed. Be assured that nothing shall disturb the engagement just made to you, so long as your house is loyal to the Crown, and faithful to the conditions of the Treaties, grants, and engagements which record its obligations to the British Government.

Connexion between the Sanads and a policy of union.

§ 65. The Imperial Prerogative was exercised in many ways after the Mutiny, as by the bestowal of decorations, honours, and salutes, and by the grant of territorial possessions; but no manifestation of it was received by the princes of India with so much enthusiasm as the issue of the eight score of Sanads

of adoption or succession. Their influence has extended far beyond the favoured few who received the instruments. The Sanads constituted pledges, but the spirit which suggested them has guided British relations with other states besides those which received the guarantee. As observed in a previous chapter, the relations of the British Government with one member of the Indian family of sovereigns are not to be deduced from an exclusive study of the treaties or engagements with that individual state. The customary treatment accorded to the leading sovereigns is not forgotten in dealing with the rest. Thus, rulers of states who have not received any pledge or guarantee of adoption are encouraged, as an act of policy, to make timely provision for the succession by invoking the sanction of the British Government to their adoption of a successor on failure of natural heirs. The close connexion of annexation with the policy of non-intervention has been traced, and Lord Canning made it quite clear that a removal of any dread of annexation by a guarantee of adoption was not to be made an excuse for insubordination or misrule. Apart from the limitation in the Sanad, which confines the guarantee to a ruler of a state, so that a deposed sovereign or a ruler's widow cannot claim the privilege, Lord Canning made his intentions clear in the following terms. On the 30th of April 1860, he wrote: "The proposed measure will not debar the Government of India from stepping in to set right such serious abuses in a Native Government as may threaten any part of the Country with anarchy or disturbance, nor from assuming temporary charge of a Native state when there shall be sufficient reason to do so. This has long been the practice. We have repeatedly exercised the power with the assent, and

sometimes at the desire, of the chief authority in the state; and it is one which, used with good judgment and moderation, it is very desirable that we should retain. It will, indeed, when once the proposed assurance shall have been given, be more easy than heretofore to exercise it. Neither will the assurance diminish our right to visit a state with the highest penalties, even confiscation, in the event of disloyalty or flagrant breach of engagement."

Even before the Sanads were issued, an opportunity occurred for the application of the new policy. The Raja of Garhwal, or Tehri, died in 1859 without legitimate issue, and the British had a clear title to annexation by the doctrine of lapse. The sovereignty was, however, conferred on his illegitimate son, Bhowan Singh. The terms of the Sanad, dated the 6th of September 1859, indicated the closer union which was about to be established. After reciting the fact of the lapse, and thus showing that the Viceroy did not question the legality of the views of right entertained by Lord Dalhousie, the deed referred to the firm attachment of the late Raja, and granted to Bhowan Singh, and the heirs male of his body lawfully begotten, the title of Raja and the state of Garhwal. It proceeded: "Be it also known that British subjects, both native and European, shall have free access into the Raja's territories for commerce and otherwise; that they shall receive the same consideration and protection as the subjects of the Raja; that the Government shall have power to make roads through the Garhwal territory, and that this grant has been made on condition of good behaviour and of service, military and political, in time of danger and disturbance." Thus, on the very threshold of the new period, the barriers of isolation were removed,

and the identity of the interests of British and the Raja's subjects was proclaimed. It may be added that in March 1861, the Raja received a Sanad of adoption, from which it may be inferred that his Sanad of 1859 did not necessarily involve the right of adoption inherent, as some have argued, in a Hindu. Another Sanad issued by Lord Canning is equally instructive. To several states, such as Hyderabad, Gwalior, Nepal, Bhopal, Patiala, Jind, Nabha, Rampur, and Bikanir, territorial grants and other rights were conveyed in reward for services rendered during the rebellion. Of these the Patiala Sanad, dated the 5th of May 1860, is most significant. The Maharaja and his heirs are entitled to exercise full sovereignty within their dominions, and are invested with absolute powers of life and death over their own subjects. But whilst the British Government undertook to receive no complaints from any of the subjects of the Maharaja, and to abstain from interference in his household and family arrangements, His Highness engaged on his part to "execute justice and promote the happiness and welfare of his people." Certain crimes were indicated as requiring punishment with the utmost rigour; and these obligations, as well as the general engagement just recited, indicate a growing conviction that the union, whilst it demands on the part of the British Government patient toleration and the avoidance of mischievous interference, also imposes a responsibility for good government on the states directly, and on the British power if the states are remiss. If the Sanads given to the Cis-Sutlej states hardly attain to all of the declared objects of the Swiss confederation, which "a pour but d'assurer l'indépendance de la patrie contre l'Étranger, de maintenir la tranquillité et l'ordre à l'intérieur, de

protéger la liberté et les droits des confédérés, et d'accroître leur prospérité commune," they do not fall far short of it. These Sanads also accentuate the duty of "loyalty and devotion to the Sovereign of Great Britain," a condition which is expressly attached to the duty accepted by the Crown of upholding the honour and dignity of the Maharaja and his house. In short the Sanads of adoption, and the Sanads by which the first Viceroy confirmed or bestowed on chiefs their title to rule under British protection, indicate in the most pointed manner the closer relations established between the Indian protected princes and their suzerain, and the obligations as well as the benefits of the partnership.

Three leading cases.

§ 66. There is no sameness about the three events which have been picked out as affording object-lessons of the policy that distinguishes the period of Indian history following the Mutiny from those which preceded 1857. It is true that in Baroda, Mysore, and Manipur Native rule was restored in each instance after some interruption and suspense, but in other respects the circumstances vary. The deposition of the Gaikwar in consequence of misrule, and not on account of disloyalty, is the instructive incident of the Baroda episode, whilst the summary of conditions attached to the regrant of Mysore was the lesson which the Marquis of Ripon conveyed. In Manipur the incidents were more complicated, and although they illustrate the penalties of disloyalty, they also furnished an occasion for emphasising several general principles affecting the relations of Native states with the British Government. It is inevitable that the variety and richness of material with which historians of British India are surrounded should crowd out of view the events which constitute

the history of British intercourse with the country princes. To this tendency may be attributed the general statement made in the best of Indian histories, that the Maratha Gaikwar of Baroda was dethroned in 1875 for misgovernment and disloyalty. More than half the value of the lesson would be lost if the charge of disloyalty had been proved; and since the Baroda case constitutes a landmark in the political history of India having a direct bearing on the vital connexion of annexation with a policy of non-intervention, it is necessary to correct any misapprehension as to the cause of the Gaikwar's deposition.

The Gaikwar's deposition and its lessons.

§ 67. It has already been seen that the British Company entered into direct relations with Baroda before the Peshwa had resigned his sovereign authority over the Maratha confederacy and the Gaikwars in particular. In the Treaty of the 6th of June 1802, which was afterwards recognised by the Peshwa in the Treaty of Bassein, the Company granted the Gaikwar its "protection in all his public concerns, according to justice and as may appear to be for the good of the country, respecting which he is also to listen to advice." But in 1820 Mountstuart Elphinstone gave the ruler of Baroda this formal assurance: "With regard to internal affairs Your Highness is to be unrestrained, provided you fulfil your engagements to the bankers of which the British Government is the guarantee." It was added that the British Government would offer its advice whenever any emergency occurred. In 1841 the Governor of Bombay addressed to His Highness a letter in which he wrote: "The British Government in no way wishes to interfere in the internal administration of Your Highness's territory, of which it acknowledges you to be the sole Sovereign." The Baroda state was

thus in much the same position as any other leading state in India, being, perhaps, less bound in regard to its internal administration than Oudh or Satara. In December 1856 Khande Rao succeeded to the rulership, and his maladministration called for protest from the British Government, but no measures of interference were taken. In 1870 he was succeeded by his brother, Mulhar Rao, under whose evil rule the disorganisation increased, until in 1873 the Government of India was obliged to appoint a Commission of inquiry to report on the facts. On receipt of their report the Gaikwar was solemnly warned, as the king of Oudh had been, that if certain reforms were not carried out, His Highness would be relieved of his authority. Before the close of the probationary period, an attempt to poison the representative of Government at Baroda was reported, and His Highness was suspected of having abetted the offence. There was thus added to a charge of misrule the more serious charge of disloyalty, and by a Proclamation, dated the 13th of January 1875, the paramount power expressed its view of the matter in these terms: "Whereas to instigate such attempt would be a High crime against Her Majesty the Queen, and a breach of the condition of loyalty to the Crown under which Mulhar Rao Gaikwar is recognised as Ruler of the Baroda state, and moreover such an attempt would be an act of hostility against the British Government." The Gaikwar was accordingly suspended, and publicly tried by a Court on which two of the most conspicuous of the Sovereigns of India, the rulers of Gwalior and Jaipur, sat with other High Commissioners. The Commissioners were not unanimous, and in a Proclamation, dated the 19th of April 1875, the supreme Government formally and publicly

abandoned the charge of disloyalty. "The Commissioners being divided in opinion, Her Majesty's Government have not based their decision on the inquiry or report of the Commission, nor have they assumed that the result of the inquiry has been to prove the truth of the imputations against His Highness." Having eliminated the serious charge of disloyalty, the British Government deposed Mulhar Rao from the sovereignty of Baroda, and precluded him "and his issue" from all rights, honours, and privileges thereto appertaining on the grounds of notorious misconduct, gross misgovernment of the state, and evident incapacity to carry into effect the necessary reforms. But the British authorities desired to re-establish a Native administration, and they therefore granted, as a special favour, the request of the widow of His Highness Khande Rao to adopt a son from the Gaikwar family, on one important condition, that Her Highness should adopt the person whom the British Government might select as most suitable for the purpose.

Thereon a boy was selected by Government, and adopted by the Maharani, and during his prolonged minority the administration was conducted under the direct control of the Resident by a large staff of British officials recruited with the utmost care from the public service of British India. The administration was brought into excellent order in accordance with the principles of British administration, and the system so introduced has been more or less maintained by the Maharaja since he was entrusted with full powers and privileges. The instructive interest of the Baroda case lies in the contrast which it affords to the annexations which preceded the Mutiny. The new doctrine of personal responsibility and union

was enforced. Gross misrule, and inattention to advice to which the Gaikwar was bound to listen, were punished, not by a persistent refusal to intervene until the "welfare of suffering millions" demanded the suppression of Native rule, but by authoritative orders of reform, followed by deposition when "the incapacity to effect the necessary reforms" was clearly established. No modification of the treaties of Baroda was required, and no fresh terms or conditions of protection and recognition were taken from the new ruler. He entered upon his duties immediately after a public exhibition of the new principle of interference, and of the interpretation of his treaty engagements which altered conditions involved; and the relations which from that moment subsisted between him and the paramount power needed no tie save that supplied by the treaties and customary law which bound his predecessors to the Empire. The fact that pre-existing Baroda treaties were not altered lends confirmation to the rules of interpretation to which attention was drawn in a previous chapter.

The rendition of Mysore.

§ 68. The rendition of Mysore by Lord Ripon to its Native ruler was practically a regrant, and not merely a restoration of Native rule after a temporary interruption caused by the personal vices and incapacity of a particular sovereign. The value of this great historical event lies in its relation to similar restitutions made by previous Governor-Generals at different epochs in the course of British dealings with the sovereignties of the country. The question to which this transaction supplies an answer is—What views of the obligations and rights of Native rulers were severally held in 1793, 1819, and 1881, when the policies of Lord Cornwallis, Lord Hastings, and

Lord Ripon were written respectively on the title-deeds or patents of the rulers of Coorg, Satara, and Mysore? The Coorg Raja's engagement describes in six articles "the situation in which he stands with regard to the Honourable East India Company." The first three clauses deal with his military services in terms of equality of status with the British. The fourth extends to him protection, and the fifth contains a statement of the tribute to be paid for such protection. The sixth and last conveys a guarantee against interference in the management of his country. The engagement, ratified by Lord Hastings in 1819, with the Raja of Satara places His Highness in subordinate co-operation with the British Government, and whilst it assures him of protection, it defines his military obligations. Supplies required by British troops are to be readily granted on payment. The Native state's military force is to be fixed by the British. His Highness is to have no diplomatic intercourse with other states, and he is to grant extradition of criminals when demanded. The conclusion of a commercial treaty is promised, and certain arrangements in respect of customs and forests are guaranteed. Passing from the patents of 1793 and 1819 to the instrument signed in 1881, it will be seen that the closer ties of union established with Mysore required a far greater detail in regard to matters of common welfare, as distinguished from those of the common defence.

The document which transferred authority to the young Maharaja of Mysore deserves careful attention, because the terms of it received the most patient consideration. In 1799 Lord Wellesley recreated a Hindu sovereignty in Mysore, and whilst he assured the Maharaja of British protection, he insisted upon

good government and a contribution towards the cost of Imperial defence, which was commuted in 1807 by Sir George Barlow to the maintenance of a body of 4000 cavalry in ordinary times. Unfortunately the Maharaja proved incapable, and, after persisting in his evil courses, drove his subjects into rebellion. Annexation would have been welcomed, as in Coorg, with gratitude by the people of Mysore; and in 1831 it was determined, as a half-way house to annexation, to place the country under the direct administration of British officials, and to leave His Highness only his titular dignity and a liberal allowance. The Maharaja's debts were from time to time liquidated, but his request to be allowed to regulate the succession by adoption was steadily refused. The administration improved greatly in the hands of Government, and the foundations on which its prosperity was laid were so secure that the Native state is still accounted the best-administered state in India. On the death of the deposed Maharaja in 1868, the Government of India recognised his adopted son as his successor, undertaking that when he attained his majority he should, if found qualified for the discharge of the duties of Maharaja, be entrusted with rule subject to such conditions as might then be determined. Every regard was paid to his education, and to the equipment of the state with a well-selected body of laws, with a good system of revenue settlement and accounts, and with competent courts of law. The deed of transfer, with which the Marquis of Ripon, on the 1st of March 1881, finally restored the country to its own ruler, is a document of such importance as summarising his relations to the British power, that it is best to leave it to the reader to study the original, as

reproduced below from the papers published by order of Parliament :—

Instrument of Transfer

Whereas the British Government has now been for a long period in possession of the territories of Mysore, and has introduced into the said territories an approved system of administration: And whereas, on the death of the late Mahárája, the said Government, being desirous that the said territories should be administered by an Indian dynasty under such restrictions and conditions as might be necessary for ensuring the maintenance of the system of administration so introduced, declared that if Mahárája Chamrajendra Wadiar Bahádur, the adopted son of the late Mahárája, should, on attaining the age of eighteen years, be found qualified for the position of ruler of the said territories, the government thereof should be entrusted to him, subject to such conditions and restrictions as might be thereafter determined: And whereas the said Mahárája Chamrajendra Wadiar Bahádur has now attained the said age of eighteen years, and appears to the British Government qualified for the position aforesaid, and is about to be entrusted with the government of the said territories: And whereas it is expedient to grant to the said Mahárája Chamrajendra Wadiar Bahádur a written instrument defining the conditions subject to which he will be so entrusted: It is hereby declared as follows:—

1. The Mahárája Chamrajendra Wadiar Bahádur shall, on the twenty-fifth day of March 1881, be placed in possession of the territories of Mysore, and installed in the administration thereof.

2. The said Mahárája Chamrajendra Wadiar Bahádur, and those who succeed him in manner hereinafter provided, shall be entitled to hold possession of and administer the said territories as long as he and they fulfil the conditions hereinafter prescribed.

3. The succession to the administration of the said territories shall devolve upon the lineal descendants of the said Mahárája Chamrajendra Wadiar Bahádur, whether by blood or adoption, according to the rules and usages of his family, except in case of disqualification through manifest unfitness to rule.

Provided that no succession shall be valid until it has been recognised by the Governor-General in Council.

In the event of a failure of lineal descendants, by blood and adoption, of the said Maháràja Chamrajendra Wadiar Bahádur, it shall be within the discretion of the Governor-General in Council to select as a successor any member of any collateral branch of the family whom he thinks fit.

4. The Maháràja Chamrajendra Wadiar Bahádur and his successors (hereinafter called the Maháràja of Mysore) shall at all times remain faithful in allegiance and subordination to Her Majesty the Queen of Great Britain and Ireland and Empress of India, her heirs and successors, and perform all the duties which, in virtue of such allegiance and subordination, may be demanded of them.

5. The British Government having undertaken to defend and protect the said territories against all external enemies, and to relieve the Maháràja of Mysore of the obligation to keep troops ready to serve with the British army when required, there shall, in consideration of such undertaking, be paid from the revenues of the said territories to the British Government an annual sum of Government rupees thirty-five lákhs in two half-yearly instalments, commencing from the said twenty-fifth day of March 1881.

6. From the date of the Maháràja's taking possession of the territories of Mysore the British sovereignty in the island of Seringapatam shall cease and determine, and the said island shall become part of the said territories, and be held by the Maháràja upon the same conditions as those subject to which he holds the rest of the said territories.

7. The Maháràja of Mysore shall not, without the previous sanction of the Governor-General in Council, build any new fortresses or strongholds, or repair the defences of any existing fortresses or strongholds in the said territories.

8. The Maháràja of Mysore shall not, without the permission of the Governor-General in Council, import or permit to be imported into the said territories arms, ammunition, or military stores, and shall prohibit the manufacture of arms, ammunition, and military stores throughout the said territories, or at any specified place therein, whenever required by the Governor-General in Council to do so.

9. The Maháraja of Mysore shall not object to the maintenance or establishment of British cantonments in the said territories, whenever and wherever the Governor-General in Council may consider such cantonments necessary. He shall grant free of all charge such land as may be required for such cantonments, and shall renounce all jurisdiction within the land so granted. He shall carry out in the lands adjoining British cantonments in the said territories such sanitary measures as the Governor-General in Council may declare to be necessary. He shall give every facility for the provision of supplies and articles required for the troops in such cantonments, and on goods imported or purchased for that purpose no duties or taxes of any kind shall be levied without the assent of the British Government.

10. The military force employed in the Mysore state for the maintenance of internal order and the Maháraja's personal dignity, and for any other purposes approved by the Governor-General in Council, shall not exceed the strength which the Governor-General in Council may from time to time fix. The directions of the Governor-General in Council in respect to the enlistment, organisation, equipment, and drill of troops shall at all times be complied with.

11. The Maháraja of Mysore shall abstain from interference in the affairs of any other state or power, and shall have no communication or correspondence with any other state or power, or the agents or officers of any other state or power, except with the previous sanction and through the medium of the Governor-General in Council.

12. The Maháraja of Mysore shall not employ in his service any person not a native of India without the previous sanction of the Governor-General in Council, and shall, on being so required by the Governor-General in Council, dismiss from his service any person so employed.

13. The coins of the Government of India shall be a legal tender in the said territories in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India; and all laws and rules for the time being applicable to coins current in British India shall apply to coins current in the said territories. The separate coinage of the Mysore state, which has long been discontinued, shall not be revived.

14. The Mahárája of Mysore shall grant free of all charge such land as may be required for the construction and working of lines of telegraph in the said territories wherever the Governor-General in Council may require such land, and shall do his utmost to facilitate the construction and working of such lines. All lines of telegraph in the said territories, whether constructed and maintained at the expense of the British Government, or out of the revenues of the said territories, shall form part of the British telegraph system, and shall, save in cases to be specially excepted by agreement between the British Government and the Mahárája of Mysore, be worked by the British Telegraph Department; and all laws and rules for the time being in force in British India in respect to telegraphs, shall apply to such lines of telegraph when so worked.

15. If the British Government at any time desires to construct or work, by itself or otherwise, a railway in the said territories, the Mahárája of Mysore shall grant free of all charge such land as may be required for that purpose, and shall transfer to the Governor-General in Council plenary jurisdiction within such land; and no duty or tax whatever shall be levied on through traffic carried by such railway which may not break bulk in the said territories.

16. The Mahárája of Mysore shall cause to be arrested and surrendered to the proper officers of the British Government any person within the said territories accused of having committed an offence in British India, for whose arrest and surrender a demand may be made by the British Resident in Mysore, or some other officer authorised by him in this behalf; and he shall afford every assistance for the trial of such persons by causing the attendance of witnesses required, and by such other means as may be necessary.

17. Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council, and the Mahárája of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the Governor-General in Council.

18. The Mahárája of Mysore shall comply with the wishes of the Governor-General in Council in the matter of prohibiting or limiting the manufacture of salt and opium, and the cultivation

of poppy, in Mysore; also in the matter of giving effect to all such regulations as may be considered proper in respect to the export and import of salt, opium, and poppy heads.

19. All laws in force and rules having the force of law in the said territories when the Mahárája Chamrajendra Wadiar Bahádur is placed in possession thereof, as shown in the schedule hereto annexed, shall be maintained and efficiently administered, and, except with the previous consent of the Governor-General in Council, the Mahárája of Mysore shall not repeal or modify such laws, or pass any laws or rules inconsistent therewith.

20. No material change in the system of administration, as established when the Mahárája Chamrajendra Wadiar Bahádur is placed in possession of the territories, shall be made without the consent of the Governor-General in Council.

21. All title-deeds granted and all settlements of land revenue made during the administration of the said territories by the British Government, and in force on the said 17th day of March 1881, shall be maintained in accordance with the respective terms thereof, except in so far as they may be rescinded or modified either by a competent Court of law, or with the consent of the Governor-General in Council.

22. The Mahárája of Mysore shall at all times conform to such advice as the Governor-General in Council may offer him with a view to the management of his finances, the settlement and collection of his revenues, the imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture, and industry, and any other objects connected with the advancement of His Highness's interests, the happiness of his subjects, and his relations to the British Government.

23. In the event of the breach or non-observance by the Mahárája of Mysore of any of the foregoing conditions, the Governor-General in Council may resume possession of the said territories and assume the direct administration thereof, or make such other arrangements as he may think necessary to provide adequately for the good government of the people of Mysore, or for the security of British rights and interests within the province.

24. This document shall supersede all other documents by which the position of the British Government with reference to

the said territories has been formally recorded. And, if any question arise as to whether any of the above conditions has been faithfully performed, or as to whether any person is entitled to succeed, or is fit to succeed to the administration of the said territories, the decision thereon of the Governor-General in Council shall be final.

(Signed) RIPON,
Viceroy and Governor-General.

FORT WILLIAM, 1*st March*, 1881.

Principles laid down in the Manipur case.

§ 69. The Manipur state was a comparatively unknown member of the family of Indian sovereignties, when the tragic events of the murder of Mr. Quinton, the Chief Commissioner of Assam, and of others of his party, brought it into an evil notoriety, and made it the platform for the public declaration of important principles on the subject of political relations. Although the British connexion with the state had been established soon after the battle of Plassey, it was not until the conclusion of the Treaty with Ava in 1826 by Lord Amherst that Manipur was included in the protectorate. The King of Ava on that occasion agreed to recognise Ghumbhir Singh as Raja of Manipur if he returned to it, and in 1833 certain hilly tracts were annexed to Manipur by the British. Partly, however, owing to its geographical isolation, and partly in consequence of its backwardness in civilisation, British intercourse with the principality was confined to the formal admission of subordination by the rulers of Manipur, and to periodical intervention for the suppression of usurpers or for the banishment of relatives dangerous to the stability of the Maharaja's rule. In September 1890 Maharaja Sur Chandra Singh fled from his state, whilst his younger brother, the Senapati, having seized the

palace and the arsenal, prepared to resist the return of the lawful ruler. The Jubraj, or Heir-apparent, who was absent at the time of the revolution, then returned to Manipur, and assumed the Raj with the support of the rebel Senapati. The Maharaja, who had secured his own safety by retirement into British territory, appealed to the authorities for aid in order to recover his position. But, although the British Government had once formally recognised the title of the Maharaja, and agreed to support him against rebellion, it was clear that Sur Chandra Singh was unfit to rule, and that he could not be relied upon to act in accordance with the advice he might receive. He had already abdicated, and he now recalled his abdication, but the Government of India was not satisfied that either the interests of public peace, or the welfare of Manipur, would be secured by his forcible restoration to a post in which he could never fulfil his obligations and duties. It was therefore determined to recognise the Jubraj as Maharaja. At the same time rebellion could not be tolerated, and the removal of the Senapati from Manipur was ordered.

The Chief Commissioner of Assam proceeded in March 1891 with an escort to Manipur to carry out these orders. The resistance offered to him by the Senapati and the Jubraj and the treacherous murder of the British officers invited to a conference need not here be dwelt upon. The trial which ensued after the suppression of the soldiery who had rebelled against their Maharaja's authority, and after the re-assertion of order by British troops, afforded an opportunity for laying down a principle as to resistance to the Imperial authority; and the conviction of the leaders and their execution for the offence of murder placed in

the clearest light the view in which their conduct was regarded as a political crime. But the state was not annexed for what was rebellion against the supreme authority; and although ample security was taken for the introduction of necessary reforms, Manipur remains written on the map of the Indian protectorate. The importance, however, of the case of Manipur lies not in the preservation of Native rule, but in the principles which were enunciated and approved by the highest authority. These principles were the repudiation by the Government of India of the application of International law to the protected states; the assertion of their right to settle successions and to intervene in case of rebellion against a chief; the doctrine that resistance to Imperial orders constitutes rebellion; and the right of the paramount power to inflict capital punishment on those who had put to death its agents whilst discharging the lawful duty imposed upon them. These principles afford so marked a contrast to the rules applied in the case of Coorg, against which war was declared and the penalty of annexation decreed, that it is desirable to quote the exact sentences in which the rule of conduct was declared and published in the official *Gazette of India.* Her Majesty's Government wrote in the Despatch of the Secretary of State, dated the 24th of July 1891, as follows: "Of the right of the Government of India to interfere after the forcible dispossession of the Maharaja there can be no question. It is admittedly the right and the duty of Government to settle successions in the Protected states of India generally." "Your interference was necessary also in the interests of the British Government, which has of late years been brought into much closer relations with the state and its subject tribes than was formerly the

case, and cannot safely tolerate disorders therein." The Government of India in their Telegraphic Despatch, dated 5th June 1891, were even more specific —"Every succession must be recognised by the British Government, and no succession is valid until recognition has been given. This principle is fully understood and invariably observed." As this public Notification, published in the *Gazette of India* of the 22nd of August 1891, page 485, explained, the strict rules of International law have no bearing upon the relations between the Government of India, as representing the Queen-Empress on the one hand, and the Native states under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter. In the exercise of their high prerogatives, the Government of India have, in Manipur as in other protected states, the unquestioned right to remove by administrative order any person whose presence in the state may seem objectionable. The rule was therefore laid down that "any armed and violent resistance to the arrest of such person was an act of rebellion, and can no more be justified by a plea of self-defence than could resistance to a police officer armed with a Magistrate's warrant in British India." If the unlawful resistance led to the death of the agents of Government, then the persons who caused their death were guilty of murder. Therefore it was proclaimed at Manipur on the 13th of August 1891: "It is hereby notified, for the information of the subjects of the Manipur state, that Tekendrajit Bir Singh, *alias* the Jubraj of Manipur, was in the month of June tried by special Commission, and convicted of waging war against the Queen-Empress of India, and abetment of the murder of British officers,

and was sentenced to be hanged, which sentence has been confirmed by the Government of India, and will be duly carried out." Then followed other sentences commuted to transportation for life with forfeiture of all property. The proclamation ended thus: "The subjects of the Manipur state are enjoined to take warning by the punishments inflicted on the above-named persons found guilty of rebellion and murder." The contrast with the case of Coorg is very instructive. The proclamation, issued in 1834, referred to war as "the only means left of vindicating the dignity of the sovereign state." "A British army" was to "invade the Coorg territory," and "British subjects" in the service of Coorg, who "may in any way render assistance to the enemy, will be considered as traitors." Thus it was that Coorg, which received the rights of war, also received the penalties of International law. The spirit of the new period of union and guarantee, which was signalised by the Sanads of Lord Canning, created in regard to Manipur a different status. The weapons used were no longer taken from the arsenal of international law: the protecting power established its own tribunal, punished the offenders in a Native state, and warned the subjects of Manipur that they were not beyond the reach of a foreign jurisdiction.

General view of the agreements of the Period.

§ 70. It is hardly necessary to enumerate the many indications of the new policy of union and preservation of the Native states, which the events of the last fifty years have multiplied. The adoption of the Imperial title, under the provisions of statute 39 Vic. cap. x., introduced no change that had not already been effected by fact and history. The Privy Council, in the case of Dámodhar Gordhan *v.* Deoram Kanji, laid down the doctrine, that "The

Queen was the paramount Sovereign of India long before she was so declared by the Act of 1858, which simply determined the trust administration of the Company, and did not create any title in the Crown which the Crown did not previously possess." So, in 1876, the addition to Her Majesty's Royal style and titles did not create, but only called public attention to an existing fact. The occasion was seized by Lord Lytton to bring prominently before the Chiefs the union of their states with the British Government. Not only were some of them created Counsellors of the Empress, but the words of the Imperial message conveyed to all of them by the Viceroy were such as never entered into the minds of former Governor-Generals, who had admitted with sparing hand a few of the states into alliance with the Company. The visits of members of the Royal Family of Great Britain and Ireland to India, and the parts taken by the Indian princes in the opening of the Imperial Institute in 1893, and on other public occasions in London, have tended to draw closer the bonds of union. The results are written in the treaties and engagements of the period of India's history under the Viceroys. Omitting 160 Sanads of adoption given by the first Viceroy, to which Lord Lansdowne added 17 in 1890, most of the remaining engagements of the past fifty years deal with matters of internal sovereignty, in regard to which the protected allies have joined hands with the British Government in promoting the common welfare of the Empire. Some of the instruments testify to the loyal assistance rendered by the states of Hyderabad, Nepal, Gwalior, Bhopal, Patiala, Jind, Nabha, Rampur, and Bikanir during the stress of the rebellion. But the bulk of Indian engagements concern mutual arrange-

ments for the repression of smuggling, the freedom of trade, the construction of railways, telegraphs, and canals, the extension of postal systems or the protection of mails, the cession of lands for sanitaria or civil stations, the preservation of forests, the extradition of criminals, and jurisdiction or the recognition of legal acts.

Imperial service troops.

The request of certain states, as of Kashmir, the Cis-Sutlej states, Bahawalpur, Jodhpur, Jaipur, Gwalior, Rampur, Mysore, Bhaunagar, and other Rajput and Kathiawar states, to be allowed to maintain regiments of Imperial service troops available for the defence of the Empire, stands in marked antithesis to the pressure brought to bear by Lord Wellesley on the allies for the provision of subsidiary forces. The Imperial service troops are under the control of the Native states, and are commanded by their own officers. The British officers lent to the states in order to advise and assist the chiefs in bringing the troops up to the necessary standard of efficiency are not subject to the orders of the Commander-in-Chief in India, except in the event of the troops being employed on active service. In short, the contrast between the third and the first period of treaty-making is in this instance as marked as it is possible to be; for the policy introduced by Lord Dufferin is almost that which was proposed by the Raja of Travancore in 1788, and rejected by the British Company. On the 19th of June in that year the Raja asked the British Governor, "out of your favour and friendship to me, to order four officers and twelve sergeants, who are well acquainted with the exercise and discipline of troops, that I may employ them in my service." The Governor replied on the 12th of August that it was contrary to the system of the Company to lend their

officers to command any troops, "except such as are actually in their own pay and under their authority." The old system no doubt accorded with a policy of isolation and non-interference, but a policy of union and trust has stamped its own mark upon the military, as well as upon the political, system of India under the Viceroys.

Risk of benevolent coercion.

§ 71. It must be confessed that each period of intercourse with the Native states carries with it its own peculiar danger. Step by step the British authorities have advanced, with reluctance, to accept the inevitable and growing responsibilities of their position. Self-defence, in the midst of wars waged by the country princes on each other and then on the British at the instigation of the French Company, forced upon them the conclusion of treaties, although Parliament in 1793 declared that "to pursue schemes of conquest and extension of dominion in India are repugnant to the wish, the honour, and the policy of the nation." But the Company, which desired earnestly to preserve the Native princes, at first imagined that by treating them as independent nations and retiring behind the ring-fence of its own territories, it could effect its object. Experience proved that its "equal allies" were not equal. They had none of the sentiments of good faith upon which international intercourse rests. The Manipur incident, if the latest, is not the only instance of this experience. They had at the outset no experience, and no "tone of empire." Their proceedings produced military rebellions in the Punjab, misery and suffering in Oudh, and the complete disorganisation of society in Central India. Clinging to its desire to maintain the Native states, but hampered by traditions of an international position,

the Company next introduced the policy of subordinate isolation. It deprived the states of rights of war and negotiation, it settled their boundaries for them, and included the whole interior of India in its protectorate. But within the states it deemed it proper to exercise no direct control in the internal administration. If their rulers, after repeated warning, could not govern decently, the subjects must be "freed from Native rule." The rapidity of annexation, consequent on this doctrine of non-intervention, and on the retention of the empty shell of International status, once more warned the British that a change of policy was needed. The states must be saved, even against themselves, from the penalty of annexation, and the protecting power must escape from the reproach of supporting oppression by the exercise of timely intervention. Public opinion, and the closer ties bound by improved communications and the maintenance of peace, suggested a more living union. The danger of the first period was anarchy, whilst the danger which followed the extension of the protectorate was sterility, and a sense of irresponsibility in the minds of sovereigns, protected as they were against rebellion and assured of independence in their internal affairs. The danger of the present period of relations arises from the side of benevolent coercion. The quickened current of beneficent and progressive ideas, which agitates the stream of British administration, finds its way to even the most sluggish waters of the Native states. All are not in the social condition of Manipur, but in none, save those which during long minorities have enjoyed a British administration, can a high standard of internal order and progress be expected. If then the policy so faithfully pursued throughout the nineteenth century, of preserving

the Native states is to be maintained, infinite patience will be needed, and the solemn guarantees given by Parliament and the Crown in regard to their semi-sovereign rights will require to be constantly borne in mind by impatient reformers.

CHAPTER VII

THE PRICE OF UNION

§ 72. From the alliance of a few "most favoured" states within, or just outside, the ring-fence of the Company's dominions to a far-reaching inclusion of all the principalities in the interior of India within the British protectorate, and, finally, from a condition of subordinate isolation to one of partnership and union with the paramount power, the course of history has led us. Some of the protected states can produce neither treaty nor Sanad for the sovereignty which they enjoy. Others rely on documents which were drawn up when the idea of union was not present to the minds of the parties. But the right of every one of the six hundred and eighty states, recognised by the Foreign office of the Government of India as beyond the jurisdiction of the ordinary Courts of the British Empire, to the fullest measure of protection and union is firmly established by usage, by the evidence of fact, and by solemn guarantee. The Roman citizen acquired his privileges at a great price. What are the duties and obligations which the states of India owe for the right of protection and partnership which they have received? Such is the question to which some answer must now be given: and at the outset of the inquiry

The account must be kept open.

the admission must be made that the nexus of rights and duties, which unites the British Government and the Native principalities, does not admit of reduction to a formal statement of account. Their rights as well as their duties have expanded, and will continue to expand, as the circumstances which surround the union vary in the course of years. There are no recognised laws of political growth, and since the affairs of India are being more and more brought under the direct control of Parliament, no one can foresee what changes in the Indian organisation will be required to maintain the union of states under the protection and political control of His Majesty with the central authority whose supremacy they recognise. When, in 1835, Hari Rao, sovereign of Indore, threatened by his subjects invoked the Company's aid, he was informed that, as his own administration had produced disorder, the British could not interfere. The right of assistance was denied, because the spirit of non-intervention then dominated the policy of the Company, and annexation was the only recognised remedy for hopeless misrule. But under the new spirit of union, and without any alteration of treaties, the right of intervention, provided that it is unconditionally accepted, can be claimed by Holkar and every other chief in subordinate alliance with His Majesty's Government. As rights have expanded, so also have duties, and room is left for their further expansion. In the Mysore instrument, reproduced in the last chapter, a prominent place was given to the elastic clause in the fourth article—"The Maharaja and his successors shall at all times remain faithful in allegiance and subordination to Her Majesty, and perform all the duties which, in virtue of such allegiance and subordination, may

be demanded of them." At every period of Indian treaties, the need has been felt for cautious reserve and for the avoidance of misleading details of obligations which could not be foreseen. Thus the Treaty of the 27th of February 1804 with Sindhia declared its object in these terms: "By the present Treaty the union and friendship of the two states is so firmly cemented that they may be considered as one and the same." Accordingly, as the practical need has been felt, the risk of cleavage or disunion has been averted by uniting in fresh obligations the interests of the parties. In a complex system like the Indian Empire, composed of such heterogeneous elements, and advancing with such rapid strides of progress, the difficulties which may demand solution cannot be foreseen. At one period rebellion may require co-operation in a new direction, at another time the fear of invasion may call for fresh combinations, or it may be a currency revolution that unexpectedly needs the united action of the British Government and its allies. It is thus evident that considerable reserve is required in endeavouring to draw up any statement of the cost of the union to the British Government, or of the price which the states united to it must pay. The account cannot in fact be closed.

Division of the subject.

§ 73. A considerable advance towards appreciating the rights and obligations of the protected princes can be made by examining, first, the objects of the "union"; secondly, the five channels by which the stream of obligations is fed; thirdly, the evidence on which any assertion of duty must rest; and, lastly, the two sides of the account, what the states now gain and what they sacrifice for the union. In pursuing the inquiry along these lines, some light can be borrowed from the history of greater communities

or of nations, which have merged together their sovereignties and agreed to share their rights and duties for a common object.

The objects of the union.

§ 74. The historical sketch which has been traced in previous chapters, sheds light on the intentions of the parties in drawing closer the bonds of union. It is instructive to examine a complete set of treaties with a single state, and note how they, step by step, open up the ever-widening view of intercourse and union as it dawned upon the horizon of the British ascendancy. The Kolhapur Treaty of the 12th of January 1766, when the Company were still traders, established perpetual peace and friendship, in order that the British might "build a factory with warehouses at such places as may be most convenient for them (at which place they will hoist their flag), or any part of the Ranee's territories adjacent to the seashore, for vending their commodities, and to keep there such servants and people, as also vessels and boats, as they shall think necessary for conducting the same." Certain monopolies and privileges of trade were then expressly secured. In 1812, on the eve of the second period of treaties, a fresh agreement, dated the 1st of October 1812, not only contained further clauses "for the security of British trade against the renewal of piratical depredations," but it also deprived the Raja of the right of negotiation or war. The Company undertook "to apply themselves to the adjustment of such differences conformably to justice and propriety." In December 1825 still larger schemes were entertained by the British. Public tranquillity, as well as the avoidance of international disputes, became an object of importance. The Raja undertook to reduce his army, lest he should "endanger the public tranquillity within or without

his territories." In the spirit of the policy of that period a clause was added, so as not in any "wise to diminish the independence of the said Raja as a sovereign prince." No asylum was to be afforded to the enemies of the British Government, rebels, or criminals. The Company soon acquired territories in the neighbourhood, and its intercourse with Kolhapur required that the interests of British subjects should be protected. In 1827 the Kolhapur Government began to oppress certain landed proprietors who possessed claims on British protection, and a right of intervention on their behalf was secured by treaty. Owing to misgovernment His Highness was obliged to appoint a suitable minister. In 1862 a still more submissive, and indeed an exceptionally severe, agreement was entered into which reflected the altered tone of relations. The Raja now agreed to follow the advice of the British Government in all matters of importance, to establish suitable courts of justice for his subjects, and to respect the jurisdiction of his subordinate Jagirdars. The more extended objects of the agreement were "not to infringe the seignorial rights of the Raja, but merely to secure good government, and to prevent those disputes which in old days were frequently the cause of disturbance and bloodshed." Finally, in 1886, the Kolhapur state, voluntarily and as an act of comity, agreed to abolish taxes injurious to trade, and ceded to the British Government jurisdiction over the line of railway which now connects its capital with the British system of railroad.

The avowed objects of the British connexion with the Kolhapur state illustrate the general course of British relations with other states. At the outset commercial privileges were sought. Next it became

necessary in self-defence to prevent the state becoming a focus of French or other hostile intrigue. Rights of negotiation were accordingly surrendered, and when rights of war were also given up the regulation of the strength of the Native army was a necessary corollary. At this stage, when a condition of subordinate isolation was reached, pressure was felt in a new direction. The Company had acquired possession of the Belgaum and Dharwar districts in the neighbourhood of Kolhapur, and it needed co-operation and more active aid in the extradition of criminals. It accordingly insisted on the preservation of the public peace, and at a later stage on judicial reforms. With the concession of the right of adoption a distinct pledge of loyalty to the Crown was associated. Finally, the extension of railways and commerce made the freedom of trade and the cession of jurisdiction an object of general welfare. But since this co-operation was a matter of comity and not of obligation, the Native state was not obliged to reform its system of taxes on trade. It was invited to take its own course, and to act upon its own appreciation of the benefits of a policy of free trade.

From this detailed review of engagements with a particular state a few conclusions of general application may be drawn. Loyalty to the Crown is the first condition everywhere annexed to the right of protection. Throughout India to provide for the common defence is as essential an object of the union as it is declared to be in the American constitution. In assessing the cost to each state of its protection against foreign foes or other states, the practice of the Indian Government differs however from the simpler plan of the American constitution. The

surrender of all rights of negotiation and intercourse with other nations or states by every sovereignty in the interior of the country, is also a part of the price of union both in the East and in the West. But after this the parting of the ways begins. "To establish justice, ensure domestic tranquillity, promote the general welfare, and secure the blessings of liberty," is a declared object of the union in America, and a long series of duties are expressly attached to the right of the Federal Government. Congress can make laws for interstatal commerce, for fixing a standard of weights and measures, for securing uniformity of currency, for copyright and patents, and for recognising the judicial proceedings of each state; but even where the British Government has been compelled to interfere in the interests of justice, as in Kolhapur, it has been careful to limit the area and the grounds of its intervention. The public tranquillity, and the avoidance of bloodshed on its own frontiers, rather than a mission in the cause of general welfare or liberty, have been its motive; and the state has been assured that there was no desire to infringe its sovereign rights. The pressure has been as light as possible, and more frequently the British intervention has been confined to suggesting a system of justice, and then leaving it to the state to introduce it. No doubt the British Governments have repeatedly urged their allies by example and precept to promote the welfare of their subjects, but their influence has been exerted and not their authority. They have not hastily assumed the tone of duty or obligation, but have invited the states to regard themselves as responsible for, and benefited by, the promotion of a common welfare.

§ 75. Another view of the obligations of the Native

Five sources of obligations.

states may be obtained by watching them at their source. The channels which contribute to the rights or duties of the Indian chiefs are five—the Royal prerogative, Acts or resolutions of Parliament, the law of Nature, direct agreement between the parties, and usage. Loyalty to the Crown was an express condition attached by Lord Canning to the grant of the right of adoption: and although the Company had as trustee for its sovereign claimed the fidelity of the chiefs before the transfer of government to the Crown, yet after that event the Indian princes formally acknowledged their allegiance to the Queen. It is evident that the capacity of the Company of merchant princes was limited, and depended on qualifications or disqualifications annexed to their civil condition by their Charters or Acts of Parliament, which accompanied them in all their public actions. Behind the Company stood the Sovereign, as Parliament reminded the association in 1813 by Statute 53 Geo. III. cap. clv. s. 95. So too the Charter of Incorporation, granted on the 29th of October 1889 to the British South Africa Company, contained this article: "The Company shall be subject to, and shall perform and undertake, all the obligations contained in, or undertaken by ourselves under, any Treaty, agreement, or arrangement between ourselves and any other state or power, whether already made or hereafter to be made."

Royal Prerogative.

The list of obligations which, irrespective of their treaties, have devolved on the Native states through the channel of the Royal prerogative, is not large, but it includes the right of the King's Viceroy to recognise successions, to assume the guardianship of minor princes, to confer or withdraw titles, decorations, and salutes, to sanction the acceptance of

Foreign orders, to grant passports, and to recognise or appoint consular officers. The Gaikwar, who was charged with an attempt to poison Her Majesty's representative at Baroda, was indicted on a charge of "breach of the condition of loyalty under which he is recognised as ruler." It was the prerogative of the Queen-Empress to recognise His Highness, and also Her Majesty's prerogative to appoint her representative. An attack upon the Resident would have been a breach of the obligation of loyalty. There are other duties, owed by the Native chiefs, which flow from the combination of the royal prerogative and Acts of Parliament, such as the obligation to extradite foreign criminals. With the sanction of Parliament, the Crown has agreed to surrender certain fugitive accused persons to Austria, Belgium, Brazil, Colombia, Denmark, France, Germany, and other nations. The treaties have been published in the *Gazettes of India*, and if the accused finds shelter in a Native state, that state is held bound to surrender him to the British authorities without any express engagement on that behalf.

Acts of Parliament.

Other obligations flow from the action of Parliament. It must not be supposed that a statute of Parliament can confer jurisdiction over or apply to foreign subjects or their rulers in respect to acts done by them beyond the limits of British dominion. Its influence, however, is none the less felt because it is indirect. It can effectively control and command British officials, as well as British subjects, even in foreign countries, and this control inevitably reacts on those with whom they have dealings. An instance of a restriction, imposed in 1797 on the Native princes by the British Legislature, is supplied by Statute 37 Geo. III. cap. cxlii. s. 28. "Whereas," so runs the

law, "the practice of British subjects lending money or being concerned in the lending of the same, or in transactions for the borrowing of money for, or lending money to, the Native princes of India has been productive of much mischief, and is the source of much usury and extortion: and whereas the wholesome orders of the Court of Directors of the United Company of Merchants trading to India have not been sufficient to restrain and repress the same: and whereas it is highly desirable that such practices should be prevented in future," it was ordained that, from the 1st of December 1797, no British subject was to lend any money, or be concerned in raising any money for Native princes without the consent of the Court of Directors or the Governor in Council; and any person so doing might be prosecuted for misdemeanour, whilst security for moneys so lent was rendered void. When Parliament had thus declared a practice undesirable, and had assisted the Company in suppressing it, its action within the limits of its own internal jurisdiction imposed a corresponding obligation on the princes for whose benefit British law had imposed restrictions on its own subjects and servants. The protected sovereigns of India, in whose interests a misdemeanour was created, became bound not to abet a crime even without the conclusion of any treaty or engagement with them for that purpose. Accordingly, we find the principle of this legislation extended into the dealings of political officers with Native states. The protecting power expects all ruling chiefs to report any loans which they may desire to negotiate with British subjects, or in the open market in British India. It goes a step farther and declines to allow the smaller chiefs to encumber their states beyond their own lifetime, or to make

any charges upon them beyond their own life interests therein, without the sanction of Government. When in former days improvident rulers tried to defeat the benevolent intentions of the legislature by borrowing money on their own account from money-lenders, residing outside the jurisdiction of British Courts, the Directors in 1838, and again in 1856, forbade their political officers to assist in the recovery of such loans unless both creditor and debtor asked for their intervention—a condition which went far to reduce interference to arbitration and to impose caution on lenders. In 1854 they ruled that the agents of Government should not recognise any debts incurred by the predecessors of a ruling chief without his concurrence and not subsequently recognised by him. Thus the support of the Political agent to the recovery of certain loans advanced within the Native states was withheld, and when, during a minority, the state fell under British management, the settlement of claims against the revenues of the minor chief proceeded on the basis of recognising his predecessor's disability to encumber the state beyond his own life.

Again, even the spirit of British legislation must exercise some influence on its protected allies. The British Parliament has repeatedly expressed its concern for religious toleration, and although the treaties of the states in the interior of India are silent on the point, it is expected that rulers enjoying British protection will conform to leading principles which are written in large characters on the Statutes of the realm. The law of British India protects persons changing their religion from the loss of civil rights, and in the Queen's Proclamation of 1858 the royal will was expressed "that none be in anywise favoured, none molested or disquieted by reason of their religious

faith or observances." If then the courts of a Native state deprive a Hindu of his rights over his infant children, or refuse him justice in a civil suit, on the ground of his change of faith, the protecting power is bound to interfere on behalf of its own subjects resident in that state, and is justified in protesting against the application to the rest of the inhabitants of a system of intolerance publicly condemned by the Suzerain.

The law of natural justice.

It may appear fanciful to give prominence to a law of nature as a source of obligation devolving on the Native states from the incident of their subordinate union with the British Government. But although at one time the Company appealed to a law of religion, and argued with the states from their own scriptures, they preferred at a later date to condemn certain practices as "opposed to principles of natural justice and humanity." The appeal to religion is open to retort, and an authorised version of the Hindu scriptures has never yet been published by authority. Moreover, experience has proved that in such matters the paramount power must take the responsibility of declaring the duty to humanity and simply enforcing it. Accordingly, the elaborate argument used on the 25th of February 1812 to the Jam of Nawanagar has not been repeated. "From the commencement it was a custom in our Jhareji caste not to preserve the lives of daughters. On this both Governments, after expounding the Shaster on this subject, and pointing out to us the way of the Hindu religion, stated that it is written in the 'Brumhu Vywurtuk Pooran,' that whoever commits this act his sin is great, equal to killing an infant in the womb, and killing a Brahmin, so that killing a child is equal to killing 100 Brahmins." "The punishment written for this sin is that the person who

commits it will remain in a particular place in Hell for as many years as there are hairs on the person of the said woman, after which, when he is born again, he would become leprous and be subject to paralytic strokes." The painful enumeration of these horrors and punishments after death did not stop infanticide, and the contrast between policies in the first and in the third period of Indian treaties is marked by the simple proclamation issued to his Zanzibar subjects on the 16th of December 1872 by the late ruler of Kutch: "It has come to our knowledge that you carry on at Zanzibar the trade of buying and selling in slaves. This is a most horrible thing, and by the desire of the Honourable Government to put a stop to this practice we have before this time issued proclamations." Accordingly, acting upon this "desire," the Rao of Kutch announced his intention to confiscate the possessions of his subjects if they persisted in the trade. It is unnecessary here to multiply instances of obligations imposed on Native states for the suppression of inhuman practices, such as "cutting off ears and noses," "extracting eyes," "mutilating," "impalement," besides suttee, infanticide, and slavery. In a few cases the particular duty has been expressed in engagements, but in general the obligation exists by reason of the British connexion, and these horrible practices have been punished, when inflicted by ruling chiefs, as "contrary to the principles of justice and humanity," without any reference either to their own religious works or to their treaties.

Direct agreement.

Direct agreement naturally constitutes the most important source of obligations, although it does not supply the full volume of them. Even if the whole body of Indian treaties, engagements, and sanads with all the Native states were carefully compiled,

with a view to extracting from them a complete catalogue of the obligations or duties that might be held to be common to all, the list would be imperfect. With some of the larger states, whose connexion commenced at the beginning of last century, and has since then passed through a succession of historical incidents and changes, the body of obligations expressed in writing is large, but even here it is not wholly complete, as a summary of British engagements with the Gwalior state would show. The Maharajas Sinḍhia have at various times bound themselves and their successors as follows: First, to be loyal to the Crown; secondly, to surrender all their rights of negotiation to the British Government, to have the same friends and foes, and to leave it to that Government to protect Gwalior from foreign invasion and serious internal disturbances; thirdly, to render certain specified aid to the Imperial army, and to limit the strength of their own army; fourthly, to employ no Europeans or Americans, and no British subjects without consent; fifthly, to admit the responsibility of the paramount power for the administration of Gwalior during a minority, and its prerogative of recognising successors to the rulership; sixthly, to protect the Imperial mails and assist in the construction and maintenance of Imperial communication; seventhly, to respect the settlements mediated with other chiefs and petty chieftains; and lastly, to suppress predatory associations or bodies of plunderers. In addition to these obligations set forth in solemn engagements it must also be remembered that so far back as 1803 a perpetual friendship was agreed upon, and in 1804 the mutual interests of the two parties were declared to be inseparable. On the other hand, notwithstanding these vague allusions to a common welfare,

the British Government has in its treaties declared that it will not interfere in the administration of the Maharaja; and yet it is certain that the state of Gwalior is not exempt from the duties for breach of which the Gaikwar was tried by a public Commission on which Sindhia himself sat. Again, attention may be called to another set of agreements with a ruler not inferior to the Maharaja of Gwalior. The Nizam of Hyderabad has agreed to surrender deserters from the British army, to grant extradition of certain criminals, to recognise British jurisdiction over Europeans, and to perform various neighbourly offices which one country has a right to expect from another whose frontier marches with it. Sindhia would not, by reason of the silence of his own treaties on this point, dispute the right of the British Government to expect from him similar concessions, any more than he would refuse to co-operate in putting down suttee, slavery, and female infanticide, merely because he has not, in the same way as the Raja of Patiala, undertaken formally to do so. The late Sindhia was never backward in recognising the full measure of co-operation implied in the general terms of the treaties of "perpetual union" accepted by his soldierly ancestors. But the student of Indian history must search elsewhere than in these documents for an assertion of many of the services which the Gwalior state renders to the union as the price of the protection and partnership which it has received. This proposition applies with still more force to weaker states than Gwalior, since in their case written engagements have been reduced to the smallest dimensions, and long-established custom, rather than treaty, expresses their rights and duties.

Usage, the fifth source of obligations, performs a Usage.

double function. It amends and adapts to circumstances duties that are embodied in treaties of ancient date, and it supplies numerous omissions from the category of duties so recorded. The British Government occupies two distinct positions towards its protected allies. For them it arbitrates and settles differences or disputes with their neighbours as an impartial and disinterested judge. But it also has interests of its own to protect; and the contiguity of its own territories, which was referred to in the first chapter of this work, compels it in the performance of its duty to its own subjects to insist, if necessary, upon the neighbourly assistance of the friendly sovereignty on its border. To some extent arrangements are introduced by the action of the local officers which after standing the test of time and experience harden into customary law. By such means convenient practices for extradition or for the pursuit of criminals have gradually become consolidated into rules; and whenever a fresh law has been introduced into British India which required co-operative action by a state embedded in British territory, some addition has necessarily been made to the rules of conduct which have regulated the relations of that state with the British Government. If, for instance, ferries ply across a river between a British village on one side and a Native state's village on the other, the laws of British India for the collection of tolls and the security of the public against accidents would become inoperative without the adoption of co-operative measures by the Native state in respect of the landing-place and the part of the river that lies within its jurisdiction. There is not a railway line in India, nor an Imperial artery of communication by road, which is not cut into sections by the necessity for

traversing pieces, or whole states, of foreign territory. The maintenance and protection of such roads, the proper distribution of stations or toll bars, the exercise of jurisdiction where offences are committed on journeys, and the provision of resting-places for travellers and beasts of burden, require a full understanding between the local officers and subordinates of the British Government and those of the states concerned. Combined measures of this character do not, in many cases, rest on written agreement bearing the authority of the supreme Government, but upon arrangements concluded by the officers on the spot, which, from long usage and the acquiescence of both Governments in them, acquire the force of compact. In short, usage is the most considerable of the five affluents to the volume of rights and duties which have been considered.

Duties must rest on clear evidence.

§ 76. When the main source of duties is of such incalculable value, it may perhaps seem to be an impracticable and useless task to endeavour to supply any answer to the question—What does the Union cost to the paramount power and to the states? If the account must always be kept open, if the treaties are full of indefinite liabilities and reservations, and finally, if so many streams of obligation on both sides are ever pouring into the reservoir, it may be argued that the union of subordinate states with a powerful Suzerain presents nothing but danger to the states and temptation to the British Government. To this view, however, must be opposed the fact that several hundreds of states retain so large a degree of sovereignty, and that the British power is pledged to their preservation. The line drawn in practice between what a state may grant or refuse as a matter of comity or agreement, and what it is its

duty to accord, is very distinct. If the Government of India claims an obligation, or exercises a right, it seems clear from the testimony of Blue-Books which bear on the subject that it takes pains to prove its case. The evidence on which matters of right, as distinguished from matters of comity, rest, are the treaties and engagements of the states, well-established usage, and the legitimate inferences which have been drawn in leading cases, and may yet be drawn from the actual relations which exist between the parties. The affairs of the Native states are either foreign or domestic, or again they are either of imperial or of local concern. A fairly accurate view of the relations subsisting between the country sovereigns and the paramount power can be obtained by the study of documentary evidence and proof of usage. Parliament has declared, in Statute 21 and 22 Vic. cap. cvi., that "all Treaties made by the said Company shall be binding on Her Majesty." In the application of these written documents to actual circumstances, the principle of "extensive application" may properly be applied. As the author of the Pandects has observed: "Neque leges neque Senatus Consulta ita scribi possunt ut omnes casus, qui quandoque inciderint, comprehendantur: et ideo de his, quae primo constituuntur, interpretatione (aut consuetudine principis) certius statuendum est." But the most extensive interpretation of Indian treaties and compacts, with the accretions to them of the decisions passed in leading cases, and with the output of usage, still gives to the Native states a marked advantage in comparison with the price which great nations have paid for similar advantages. This result must mitigate the apprehensions to which the considerations set forth in this chapter might otherwise

give rise. Notwithstanding the danger of adding new rights and duties which are not recorded in Indian treaties, and of modifying the interpretation of such documents by overt acts or an uniform course of usage, the fact remains that the price of British protection, even if it cannot be reduced to a final statement of account, is exceedingly moderate, whether viewed in relation to its benefits or to the analogous circumstances of other countries.

§ 77. In presenting a general view of the rights and obligations which emerge from the relations of the states to the British Government, one must take into account the four positions in which the paramount power is placed. It has undertaken the responsibility for imperial defence. It has become the sole medium of communication and arbitration between the states and foreign powers, and between one state and another. Whilst affirming its desire to perpetuate the native sovereignties, it has asserted a right to the exercise of jurisdiction, to a greater or less extent, in the interior of every Native state. Lastly, it is charged with the duty of preserving the general tranquillity of the Empire, and must take action where the public peace is threatened. There are states which by special agreement have parted with some of their sovereign rights even in matters concerning their internal administration, but from this view of the general obligations and duties of the Indian sovereigns exceptional conditions, resting as they do on unimpeachable evidence of agreement or fact, may be excluded.

The profit side of the account.

Before the general disabilities or obligations of the states are further examined, a brief sketch of their rights may be given, and the profit side of the account will be found instructive. To all the united

states, no matter whether they be classed as allied, tributary, or protected, protection is guaranteed. Histories of India pass over with little comment the full significance of the benefit to India of protection by sea. Indian treaties, however, supply the omission. At no period of its Native history was India, with its long seaboard and its wealth of navigable rivers, able to provide for its own defence. It has been shown that the first connexion of the Company with Kolhapur in 1766 resulted from an expedition against that country for the suppression of piracy. Earlier still was the conclusion of an offensive and defensive alliance with Sawantwadi, in 1730, against the piratical chief of Kolaba. The Mughal emperors could only pretend to secure the peace of the seas by giving territories on the shore to the Abyssinian settlers in Janjira, who were made admirals of the Muhammadan fleet. The Marathas failed utterly to keep down piracy. The rivers of India were infested with boats from which a perpetual warfare was maintained on the river-borne traffic, and blackmail was levied on the villages that could be reached from the banks. If a wider view is taken of the defence of India, the navies of European powers were constantly found engaged in warfare with the Company's vessels, until at last they were chased from the Indian Ocean and the Bay of Bengal. Before the establishment of the British power the mastery of their own seas never rested with the native rulers of India. The Company not only cleared the Indian seas of pirates at their own cost, but they also extended their protection of Indian shipping by the acquisition of Ceylon and more distant islands, and by a whole network of engagements with the maritime states on the coasts of Arabia, Persia, and even Africa.

The defence afforded to India against her territorial neighbours fills even a larger space in histories of India. The massacre at Delhi and Meerut, when in 1398, the streets were made impassable owing to the heaps of the slain, afforded proof of the incapacity of King Mahmud to withstand the invasion of Tamerlane. Again in 1739 the Persian invader, Nadir Shah, repeated the massacre, and carried off plunder estimated at thirty-two millions of pounds sterling. On the North-western and the North-eastern frontier of the Empire not so much as an attempt to keep the peace of the border districts was made. When the Sikhs were consolidating their power, some sort of protection was afforded by sterner methods which only tended to demoralise the country. Thus the Chief of Chamkanni held a grant of land subject to the condition that he should annually produce a specified number of Afridi heads. Raja Ghulab Singh protected his frontier by letting slip his Dogra troops upon the Murree hill villages, and paying sixpence a head for each hill man who was killed. The civilised but more expensive method pursued by the British, who with their military outposts also placed dispensaries for the treatment of the savage frontier people, and offered them lands and canal water for cultivation, was unknown in the eighteenth century.

With the establishment of peace and order, both on the seas and on the frontiers of India, the benefits conferred on the protected states are by no means exhausted. The subjects and rulers of the states share in the advantages, but not in the cost, of the expensive harbours and docks with which India is equipped. The system of railroads, and to some extent that of canals and tramways, supplies their wants. The colleges and schools of British India

educate their subjects and train their public servants; and enactments, like Act XIV., 1869, which reserved certain patronage for subjects of the Queen, have been repealed in the more liberal spirit of the present age. To these considerable benefits which the states derive from union with the British Government must be added the moral support which their rulers derive from the experience brought home to their subjects that British troops are ready to maintain and restore order, if necessary, in the protected principalities. Yet no equivalent contribution is made to the revenues of India for such material advantages. For the tribute which appears in the accounts of India is, in many cases, a set-off against claims relinquished by the Company without reference to any duties of protection. Thus, by the Treaty of Poona in 1817, the Company acquired the Peshwa's right to the tribute of Kathiawar, and by the Treaty of Bassein they acquired "his rights to Chowth" from Cambay and other states. These were tributary payments, which simply represented the Maratha share in the territories which paid them. In one notable instance the policy of the British in regard to tribute has been clearly indicated. The state of Bariya, in the Rewa Kanta Agency of Bombay, was at an early date, in 1803, brought under the protectorate. In 1824 a tribute of 12,000 rupees was imposed upon it by agreement, expressly in return for protection. The tribute might have been raised under that arrangement after six years, but policies changed, and by an agreement dated the 12th of September 1892 the tribute was left with the Raja for expenditure upon public works on the condition that he abandoned transit duties. In other cases, payments are made for specific services rendered, as by the state of

Kutch, which contributes towards the cost of a British regiment stationed at Bhuj. But even that obligation was associated with liberality; for so long as the Rao contributes to the British force which upholds his authority, he is excused from an annual payment of 88,000 Ahmedabad Sicca rupees which he owes for the town and district of Anjar, ceded to his ancestors in 1822. To sum up, it may be said that the native states of India receive protection against foreign foes and aggressions, the right to enjoy any commercial or political benefits secured by the diplomatic action of the British Government, and a share in the commerce, railways, and other resources of British India without any equivalent charge.

§ 78. What, then, is the return which they make for these substantial benefits? They are bound to be loyal to the Crown of Great Britain and Ireland. They have given to the protecting power a blank cheque against their resources in the event of serious necessity, whilst in ordinary times some have undertaken to pay for troops, and all have accepted the obligations of assisting the imperial army in such a manner as will be described at greater length in the next chapter. They have parted with their rights of negotiation and communication with each other, and in all interstatal disputes or agreements they must submit to the settlement which the paramount power dictates. They have agreed not to employ Europeans without the consent of the British Government, and have parted with their jurisdiction over them. In matters of imperial and vital concern, they accept the duty of subordinate co-operation, provided that their internal sovereignty is not under ordinary circumstances invaded, except where the British Government

The loss side of the account.

has acquired by special engagement, or usage, a control over their internal administration. This reservation is all-important, and the position may be put in another way. The right of extraordinary intervention by the paramount power in the internal affairs of the country princes is indefinite, although well understood. But except in cases where a chief's sovereign rights have been specially ceded or lost by him, the British Government requires co-operation as a matter of duty only on grounds of general policy, where the serious interests of the whole Empire, or the public safety, are at stake. Beyond that, it generally asserts no claim or obligation on the part of the state to conform to its own view of general welfare, although it may use its influence to secure a willing co-operation.

Contrast between the American and Indian states.

§ 79. It is here that the heavier obligations of the United States of America offer their main contrast to the position established in India. In matters of common defence and rights of negotiation the free states of America have felt the advantage of corporate action, and resigned their sovereign authority in favour of the Federal Government. They have even done more, for they have armed the central Government with powers of taxation and with a federal court and executive. But the declared objects of their union go still farther. They extend to matters of common welfare, and they require the surrender by the several states of very extensive powers, which in India still belong to the sovereignties of the allied princes. For instance, the supreme Government in America has not merely control over all measures that concern peace and war, and foreign relations, or commerce among the several states; it also regulates the fiscal systems of the states themselves. The Constitution provides that no tax or duty shall be laid on

articles exported from any state, nor preference given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state be obliged to enter, clear, or pay duties in another. Again, no state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws. In India such an assertion of control would, it seems to me, not be justified by existing compacts without the free consent of the states. This view is supported by the fact that when the Indian Government entered into arrangements with the Portuguese in respect to their Indian possessions at Goa, Damaun, and Diu, the participation of the Native states on the Portuguese frontiers in these measures was expressly made to depend on their communication of a wish to become parties to the commercial treaty. The protection of the imperial mails, and the reservation of some control over the railway and telegraph systems, are measures which concern imperial defence almost as much as the common welfare. Accordingly, the British Government, like the Federal authority, imposes obligations on the protected states in that respect; but it does not reserve to itself, as the American Constitution reserves to Congress, the exclusive right to coin money, regulate the value thereof and of foreign coin, and to fix the standard of weights and measures. An occasion may be conceived when the regulation of the currency throughout the Empire might become a vital and imperial concern; but the British Government has not yet asserted an obligation on the part of the states generally to accept a single currency or uniform standard of value. In the same way, the

subject of copyright and patents, notwithstanding the important interests concerned, has not been treated in India as one for intervention in the internal affairs of the country princes. Even the postal system is only partially accounted a matter of imperial concern, while the judicial proceedings of each state are not accorded the public faith and credit which they acquire under the Constitution of America. For the latter purpose it would be necessary to invest a central legislative authority with the power, which is possessed by Congress, of prescribing by general laws the manner in which public acts, records, and proceedings should be proved, and the effect thereof. The explanation of these differences lies in the distinction between the objects which the United States of America and the British Government in India have in view. "To establish justice and promote the general welfare" was as much the intention of the western states as "to provide for the common defence." The Company in India, on the other hand, repeatedly assured their allies that they would not interfere in their right to govern as they pleased. It is true that the phrase was not always couched in the uncompromising terms of article x. of the Treaty of Mandasor with Holkar, which ran thus: "The British Government hereby declares that it has no manner of concern with any of the Maharaja's children, relations, dependants, subjects, or servants, with respect to whom the Maharaja is absolute." But non-intervention was in very many cases promised in one way or another, and the promise was kept till it led to annexation in some instances, and to the silent but effective qualification of the clause generally in every instance. The exact extent of the qualification will be seen

hereafter, but it is still the practice, and indeed the duty, of the British Government to confine its interference in the internal administration within the narrowest limits. The former pledges have never been withdrawn; they have indeed been strengthened in the spirit, if not in the letter—

> And since my oath was ta'en for public use,
> I broke the letter of it, to keep the sense.

Of the guarantees given by the Company in the first period of their intercourse against intervention, it may truly be said—The letter killeth, but the spirit giveth life.

§ 80. Objection may be taken to the use of the words obligations and duties. It may be argued that these services which the states must render are imperfect obligations resting on no sanction. There is, it is true, no supreme court or federal executive to enforce obedience. On the other hand, the power of the British Government is unquestioned, and it is necessary to draw the line between services which by treaty, usage, or the necessary conditions of protection, the protected states of India have agreed to pay and those which they can render or withhold according to their pleasure. The position of the British Government is not *primus inter pares*, but paramount, and it has never lacked the force to maintain its rights and compel obedience. It has never shirked its own duties which correspond with the rights of the states. Its duty is not only to protect, but to give strength and vitality to the Native sovereignties, allowing them full scope to develop their own systems of administration. It must rely to a large extent on the argument that not merely the interests of British territory but the solid interests of each protected sovereign are

Categories of obligations.

bound up in the common good of the United Empire. But there are duties which it has the right to enforce, and those duties may be considered under five heads: obligations for the common defence, obligations in regard to external relations, obligations affecting internal administration, the duties of loyalty to the Crown, and certain jurisdictional engagements. Each of these limitations on the sovereignty of the Native states will be considered in the following chapters.

MADRAS RECORD OFFICE

CHAPTER VIII

OBLIGATIONS FOR THE COMMON DEFENCE

The exact liability of each state not yet defined.

§ 81. THE duty of a sovereign to put forth the full energies of his state for the defence of his subjects against aggression or conquest is not weakened by the fact that he has entered into combination with other states for the common defence. There is nothing unfair in holding that, in the event of war, all the states of India are under an obligation to "furnish troops according to their means at the requisition of the British Government," as the treaties negotiated by Lord Hastings expressed it, and at all times to render such assistance to the Imperial army as may be necessary. Equal states that have entered into similar unions have agreed to even more than this. They have usually undertaken to limit their own armaments in time of peace, and to contribute to the cost of the measures of defence or offence taken by the central authority. The sixth of the Articles of Confederation between the States of America declares that, "No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the

judgment of the United States in Congress assembled shall be deemed necessary to garrison the forts necessary for the defence of such state; but every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp-equipage." Regulations are made regarding the appointment of officers to raise land forces when required. The subject of contribution to charges of war is thus dealt with: "All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state." Again, under the Constitution of the 29th of May 1874, article xviii., every Swiss is liable for the defence of his country. The Confederation enacts all laws affecting the organisation of the army, and watches over their execution in time of peace. It not only controls the "corps de troupes des Cantons et tous les Suisses astreints au service militaire," but in the event of danger it has the right "de disposer exclusivement et directement des hommes non incorporés de toutes les autres ressources militaires des Cantons."

The brief review which has been given of the gradual growth of the British protectorate in India, suggests the reasons why the precise liability of each state for its share of military defence has never been worked out in similar detail. In the first period of intercourse the triple alliance against Tipu Sultan afforded many instances of the difficulties of combined

action, although the combination included only two allies of the Company. Nothing could prevent the Marathas from either holding back their forces, or else employing them for their own objects. The alliance united for "a common purpose" two inveterate foes, whose purposes were not the same and whose fighting forces, divided by race, religion, and prejudice, could not heartily work together. If the progress of the union has largely tended to soften racial jealousies and religious antipathies, it has still left one source of ineradicable difference between the several states. The population of Baroda, for instance, is essentially unwarlike, whilst that of a Sikh or a Rajput state supplies serviceable recruits. A common military organisation between communities so variously constituted must always be difficult of attainment. In the next period of intercourse the Company had nothing to fear from a French invasion: and since it was engaged in the work of political settlement and general disarmament, its desire was to reduce the military forces of the state rather than to undertake the task of organising a general scheme of defence, The violence of Sindhia's idle troops at Maharajpur in 1843, the inability of Ranjit Singh's successors to prevent the Sikh Khalsa from invading British India. and finally the collapse of the system of contingents, led to the conclusion that the problem of military co-operation had better be left alone until India had quieted down. Under these circumstances the paramount power has hitherto been content with its indefinitive claim upon the resources of the states in case of emergency, instead of assessing the precise share which each of them must contribute, whether in arms or money, for the defence of the Empire.

§ 82. There are, however, various obligations, due

Origin and character of the subsidiary forces maintained by some states.

by the states in times of peace as well as of war, which have been clearly defined by agreement or usage. Before they are discussed, it is necessary to explain one apparent inequality in the burden of defences laid upon the allies. Irrespective of the common obligation that devolves upon all, there are some states which at various periods have undertaken to maintain subsidiary forces, contingents, local forces, or Imperial service troops, more or less available for Imperial defence. An examination of the origin of these various contributions tends, however, to mitigate any sense of unfairness in the treatment of the princes who supply them. In some cases these charges represent a return for special services rendered by the British to the states, and in other cases they are due to a generous and spontaneous impulse of particular rulers, who have desired to testify to their loyal attachment to the union by keeping a military force ready for its defence. The circumstances under which the sovereigns of Oudh, and Nagpore, and the Maratha government at Poona undertook to support subsidiary forces have been shown in the sketch of history given in the third chapter; and, since the states have lapsed or been annexed, the arrangements are no longer of practical interest. Of the eight existing states which entered into subsidiary treaties, two were offered, after violating their engagements and suffering crushing defeats, the penalties of war in the shape of an assignment of territory for the support of subsidiary forces; two received from their British ally territories which were charged with the cost of similar forces; two more obtained military assistance that saved them from ruin at the modest cost of an annual payment in future; whilst in the two remaining principalities the present ruling house was established

in power by British arms, and has been maintained there by the presence of British troops.

The origin of the subsidiary forces in the first two of these states in Central India will be gathered from the following account. It was shown in the third chapter that the Treaty of Bassein negotiated with the Peshwa in 1802 was bitterly resented by Sindhia, who promptly joined the Raja of Nagpore in an attempt to defeat its object. The victories gained by Sir Arthur Wellesley, "that Sepoy General" as Napoleon contemptuously called him, over the Marathas at Assaye, Argaon, and Ahmednagar in the second Maratha war, compelled Sindhia to sue for peace, and to cede certain territories to the Company, which he did by the treaty of Sarje Anjengaon, signed on the 30th of December 1803 by Wellesley. Its 15th article contained a clause whereby, on condition that Sindhia agreed to a general defensive alliance, the Company undertook to supply six battalions of infantry, together with the necessary artillery and stores, to the Maharaja, defraying the cost from the territories just acquired by conquest. In the following year, it was agreed that "the subsidiary force will, at all times, be ready on the requisition of the Maharaja to execute services of importance, such as the care of the person of the Maharaja, his heirs and successors, the protection of the country from attack and invasion, the overawing and chastisement of rebels or exciters of disturbance in the Maharaja's dominion; but it is not to be employed on trifling occasions." By another article, the force was fixed at a strength of not less than six thousand regular infantry, with the usual proportion of artillery, to be stationed near the frontier of His Highness. Sindhia, however, never availed himself of the force, but he

preferred that the British should keep the district acquired by conquest without maintaining an army under their own command on his frontier. When the Pindari war compelled the Company to make further arrangements, the Maharaja undertook, in 1817, to furnish a contingent of 5000 horse from his own troops to act in concert with the British force. These he engaged to have regularly paid and properly equipped, and allowed the British authorities to intercept certain payments and tributes which they held in trust for him. Subsequently, territories were ceded in lieu of the cash assignments, and in 1844 the strength of the contingent was raised. But after the mutiny of the contingent, fresh territorial changes were made and additional lands conferred on the Maharaja, whereon the British Government engaged, on the 12th of December 1860, "to keep in the place of the late contingent force a subsidiary force constantly stationed within His Highness the Maharaja's territories, the whole expense of which shall not be less than 16 lakhs of Company's rupees per annum." The subsidiary arrangement with Holkar grew up under almost similar circumstances. After the defeat of the Indore troops at Mehidpur, the Treaty of Mandasor, dated the 6th of January 1818, was concluded by Lord Hastings. Mulhar Rao ceded part of his territories acquired by conquest; and "in consideration of the cessions," the British Government bound itself "to support a field force to maintain the internal tranquillity of the territories of Mulhar Rao Holkar, and to defend them from foreign enemies; this force shall be of such strength as shall be judged adequate to the object." The force became merged in the United Malwa contingent which mutinied in 1857. Holkar's contribution was capitalised, and the duties

of the force as defined in the Treaty of Mandasor are now undertaken by the Imperial army.

In the case of the next two states, Hyderabad and Mysore, the cost of the subsidiary forces was met not from territories belonging to those states, over which the British had acquired, as in the case of Indore, rights of conquest, but from territories taken by the Company from their enemies and conferred upon their allies. The Nizam had originally acquired from the Company the right to a small subsidiary force in 1766, as part of the price of his cession of the Sarkars. But after various changes the two battalions grew to four and six, and finally the force was fixed at a strength of eight thousand infantry and one thousand cavalry (the maximum still retained in the Treaty of 1853), for the payment of which, in 1800, His Highness ceded territories conferred on him under the Treaty of Seringapatam, which closed the third Mysore war in 1792, and under that of Mysore which, in 1799, followed the conclusion of the fourth war and the defeat and death of Tipu Sultan. This last treaty imposed on the revived Hindu principality of Mysore specific duties of defence, including the receipt of a military force "for the defence and security of His Highness's dominions," for which an annual cash payment of seven lakhs of star pagodas was to be made.

Cochin and Travancore became liable for subsidies as the price of military aid which they received from the Company. The state of Cochin was conquered by Haidar Ali, but at the close of the third Mysore war the tributary connexion of Cochin with Tipu Sultan was transferred to the Company. Within a few years the Company was compelled to send a force to restore order, and the Raja undertook to pay the cost of

subsidiary troops, a charge which was afterwards fixed at two lakhs of rupees. Travancore was also extricated from the clutches of the Sultan of Mysore, and, in 1795, the Raja engaged to pay a sum equivalent to the cost of three battalions of Sepoys, together with a company of European artillery and two companies of Lascars. The conditions on which the troops were to be requisitioned and furnished were carefully detailed. In 1805 the force was increased, and finally the annual subsidy due by Travancore on this account was fixed at eight lakhs of rupees.

In Baroda and Kutch the necessity for the presence of a subsidiary force was not caused by foreign foes but by dynastic troubles, and interna' disturbances which the Native princes could nc quell without British help. Anand Rao Gaikwar, th weak-minded son of Govind Rao, was unable to maintain his lawful rights against his half-brother Kanoji who after his usurpation and deposition still kept u a vigorous struggle for the succession to Baroda. Ir these circumstances the Maharaja's minister, Raoj Apaji, undertook to subsidise a British force, anc ceded territories for the purpose. In 1805, and agair in 1817, additions were made to the force, and on the latter occasion His Highness agreed "in case of war to bring forward the whole of his resources for the prosecution of the war," and to maintain an effective contingent of 3000 horse at his own cost to act with the subsidiary force when needed. Anand Rao thus secured his position by his alliance with the British and on his death in 1819 he was succeeded by hi brother, who reigned until 1847. The usurper Kanoji was deported by the Company to Madras. In Kutch also the Company furnished a subsidiary force in 1819

"at the desire of Rao Shri Desal and the Jareja Bhayad," in order to uphold the authority of the infant Rao, who was elected by the Jareja nobility as their sovereign after the deposition of Rao Bharmalji. The Kutch state was treated most generously in the matter, and its annual contribution towards the cost of the troops was reduced eventually to something less than two lakhs of rupees (British currency). The Company reserved to themselves power to withdraw or reduce the force, "when the efficiency and strength of the Rao's authority may admit of its being done with safety"; but so long as the British regiment remains at Bhuj and the full subsidy is paid, an annual payment due from the Kutch state of 88,000 Ahmedabad Sicca rupees, on account of the district and fort of Anjar, is remitted.

Obstacles to military co-operation.

§ 83. The subsidiary forces, which are still maintained under the treaties referred to, represent therefore special services rendered by the Imperial army to particular states more or less at their cost. The troops detailed for duty in the principalities concerned are a detachment of the Imperial army, which is stationed in a suitable position for the protection of those states or of their ruling families. The latest definition of their use is contained in the treaty of the 21st of May 1853 with the Nizam, which recited the important fact that "in the lapse of time many changes in the condition of princes and neighbouring states have taken place," and describes the subsidiary force as "for general defence and protection," adding that "it shall be employed when required to execute services of importance, such as protecting the person of His Highness, his heirs and successors, and reducing to obedience all rebels and exciters of disturbance in His Highness's dominions; but it is not to be

employed on trifling occasions, or like Sebundee to be stationed in the country to collect revenue." It is of course available for important service in any part of the Empire, as is every other subsidiary force, since the defence of the whole Empire involves the defence of each member of the union.

The Company's treaties for subsidiary forces reflected another idea, namely, mistrust, if not of the fidelity, at least of the efficiency of the armies of the Native states. The experience of the British in the first Mysore war, when their ally the Nawab of the Carnatic was an encumbrance rather than a help, and, in fact, in all the wars which occurred while the subsidiary treaties were being negotiated, told uniformly in one direction against the value of the Native state forces. The growth of this conviction is illustrated by many clauses in Indian treaties, of which the engagement with Oudh, concluded at Lucknow on the 10th of November 1801, furnishes a good example. An invasion of Northern India by Zamaun Shah seemed imminent, and the Company had undertaken to augment the force placed at the service of Oudh if the necessity arose. Accordingly, as a condition precedent to this increase, it was stipulated "that His Excellency, retaining in his pay four battalions of infantry, one battalion of Nujeebs and Muwattees, two thousand horsemen, and to the number of three hundred Golundauz, shall dismiss the remainder of his troops, excepting such numbers of armed persons as shall be necessary for the purpose of the collections, and a few horsemen and Nujeebs to attend the persons of the aumils." In every part of India—Southern, Western, and Eastern—the danger of an armed undisciplined rabble had made itself felt. Useless in the field, as was shown by the British successes at Plassey

and Kirki, purchased in the former case at a loss of 36 killed and 36 wounded, and in the latter of 86 killed and wounded, the overgrown military establishments had in Baroda, Palanpur and elsewhere, produced chronic disorder in the internal administration. In weighing the reasons which induced the Company to prefer subsidiary to auxiliary or contingent forces, these proofs of the practical worthlessness of most of the Native state armies are the first factor of importance which must strike the student of Indian treaties.

Other considerations must not be overlooked. In matters of combined defence, the attainment of success depends not merely on the delegation of control and direction to the central power, but also on cordial co-operation and a perfected harmony of system. Whilst the memory of repeated conflicts and race antagonism between Marathas and Rajputs, or Hindus and Muhammadans was still fresh in the minds of these classes, the cordial and effective co-operation of even the parties to the Triple alliance against Tipu Sultan in 1790 could not be secured. To have attempted on a larger scale the union of only one dozen of the leading states for their common defence would then have been a hopeless task. Even if the elements of mutual mistrust and antagonism had been removed, a further obstacle would have remained in the traditions of Indian warfare, which were unsuited to the conditions under which a civilised power waged war. The sovereigns of India took pride in the number of their irregular horsemen, and their troops were jealous of British guidance. The strong will of Sindhia or of Ranjit Singh compelled their armies to submit to European generals, but under their weaker successors the clamour of their troops to be rid of the severity

of an effective system and discipline became irresistible. The soldiers who fought for the Native state thought more of their opportunities for plunder and murder than of the triumph of the cause for which their employers used them. Thus, for many reasons, the provision of a scheme of general defence, in which the Native state troops might take their place in the Imperial military system, proved impracticable, and the Company preferred either to accept subsidies where their own troops were required by their allies, or to content themselves with obtaining a somewhat vague assurance that, if necessity arose, the protected states would assist, according to their means, at the requisition of the British authorities.

Failure of the experiment of contingents.

§ 84. Some practical experience of methods of military co-operation was gained by accepting from a few states their offers of contingents or auxiliary forces. The results only confirmed the wisdom of the Company's decision. In Baroda, Hyderabad, Bhopal, Kotah, Jodhpur, Gwalior, and other states, the experiment of requiring certain selected states to keep ready a body of their own troops, commanded, equipped, and paid by British officers, was tried, and with a single exception abandoned. In 1805 the Gaikwar undertook to furnish troops to act with the British forces on any great emergency, and in 1817 he further agreed to bring forward the whole of his military resources in the event of war, and to maintain a contingent of 3000 effective cavalry ready at any time for service with the subsidiary force. Various proposals were made for the reform of this contingent, but it proved most inefficient for even the ordinary duties of civil administration. By an agreement of the 8th of September 1881 it was abolished altogether, and in its place a body of civil police is now enter-

tained for service in the Tributary states of Gujarat. In the same way, the Rajput state of Jodhpur, in 1818, undertook to furnish a contingent of 1500 horse for imperial service, while it formally admitted its liability to place the whole of its army at the disposal of the British Government when required, except such portion as was needed for the internal administration. The obligation was eventually commuted to the payment of a fixed contribution, which was applied to the support of the Erinpura irregular force. The Kotah contingent created in 1838, the Bhopal contingent which the Nawab willingly offered in 1817, and for the support of which he had received lands, and, finally, the Gwalior contingent which Sindhia engaged to furnish in 1817, one and all mutinied in 1857. The Kotah contingent thereafter became merged in the Deoli irregular force, the Bhopal force has become a military police corps known as the Bhopal battalion, whilst the Gwalior contingent was converted into the Gwalior subsidiary force. The United Malwa contingent, which was supported from the fund contributed by Indore, Jaora, and Dewas, in commutation of their Treaty obligations to supply certain quota of troops, also proved faithless in the Mutiny, and its duties are performed by regular troops. The ruler of Palanpur undertook, in 1817, to maintain 250 horse to preserve his country in peace and order, but they were so inefficient that by the agreement of 1890 they were converted into civil police. In Kolhapur the condition of the Native army called for interference in 1829. Its strength was limited to 400 horse and 800 infantry, besides certain garrisons; but when the administration was undertaken by the British in 1838, the whole establishment was reorganised, and

on the restoration of the Raja to power in 1862, His Highness was required to keep up a regiment of infantry under British officers, and to contribute to the support of a detachment of the Southern Maratha Horse until that force was finally disbanded. From this account, it will be seen that in various parts of the country the Company endeavoured without success to solve the problem of military co-operation by requiring some of their allies to maintain contingents or bodies of the Native state troops ready for service, instead of taking from them subsidies out of which a British force was equipped, and supplied by the Company. But with the exception of the Hyderabad force none of these contingents proved efficient or weathered the storm of the Mutiny.

The Hyderabad contingent an exception to the rule.

§ 85. The history of the Hyderabad contingent is important from two points of view. It presents a solitary instance of successful experiment, and it led to a final settlement of the liability of His Highness, the Nizam, for the common defence. In examining the historical framework of the treaties with Hyderabad stress was laid on the position of parties in the Deccan. The Marathas had shown at Kharda their ability to inflict serious injury upon, if not to crush, the Muhammadan state in the Deccan. From Haidar Ali and Tipu Sultan the Nizam had no less to fear, and without the protection of the Company the Hyderabad state could not have preserved its integrity. Except on two occasions, the rulers of that important principality in the Deccan had adhered loyally to the British alliance, and although the Nizam, in 1766, engaged to support a subsidiary force, he also agreed to "assist the Company with his troops when required." In 1800 His Highness undertook to supplement the subsidiary force by six thousand infantry

and nine thousand horse of his own troops. Nor was this all. He also promised "to employ every further effort in his power for the purpose of bringing into the field as speedily as possible the whole force which he may be able to supply from his dominions." His force proved, however, hardly more efficient than the contingent supplied by other states. After the mutiny of one of the corps in 1813, two regiments of Reformed troops were raised, and they were armed and equipped like the Company's troops. Financial difficulties ensued, and the Nizam was obliged to borrow funds from the Company for the payment of the contingent. By the Treaty of the 21st of May 1853, Lord Dalhousie made a final settlement of the liability of the Hyderabad state towards Imperial defence. The strength and duties of the subsidiary force were set forth, and as an auxiliary force the "Hyderabad contingent" was constituted. "It shall consist of not less than five thousand infantry, and two thousand cavalry, with four field batteries of artillery. It shall be commanded by British officers, fully equipped and disciplined, and controlled by the British Government through its representative the Resident at Hyderabad." The services of the contingent in time of peace were detailed, and in the event of war the subsidiary force, joined by the contingent, was to be employed as the British Government might think fit, provided that two battalions of Sepoys were left near the capital of Hyderabad. Then followed the special agreement that, "Excepting the said subsidiary and contingent forces, His Highness shall not, under any circumstances, be called upon to furnish any other troops whatsoever." Thus, as in the case of Mysore, the military liabilities of Hyderabad have been commuted and fixed, but

notwithstanding this settlement both these states have of their own will loyally offered to maintain regiments of cavalry for Imperial defence. For the payment of the contingent the Assigned Districts in Berar now held under a permanent lease from the Nizam by a treaty concluded by Lord Curzon were handed over to the Company. The Hyderabad contingent by these arrangements became to a large extent detached from the control of the state and associated with the British subsidiary force. It rendered excellent service in the Mutiny, and affords the solitary instance of one solution of the difficult problem of military co-operation for the general defence.

The scheme of Imperial service troops.

§ 86. The truth of the argument, recited in the preamble of the Treaty of 1853, "Whereas in the lapse of time many changes in the condition of princes and neighbouring states have taken place," has been confirmed by the rapid movement of events in recent years. Once more the problem of military co-operation has forced itself upon the attention of the British Government and its allies. The idea expressed in the new experiment of providing Imperial service troops marks a change from the policy of mistrust and isolation which prevailed in the earlier periods of British intercourse. The states which have come forward with spontaneous offers of military co-operation are welcomed in the new spirit of union. That the experiment may not have to be put to the extreme test of war with a Foreign power is much to be hoped. But should the need arise, there is no reason to question the value of these troops in the day of trial. Infantry, cavalry, and transport corps are all alike highly commended by their inspecting officers, and so far as any of them have yet been

tested by occasional service in the field, their conduct has justified the confident hopes of Lord Dufferin and Lord Lansdowne who did so much to promote the success of the scheme. At present a combined force of some 21,000 men is maintained by twenty-seven states, and rulers of other states are anxious to contribute their contingents. These Imperial service troops are furnished by the states of Hyderabad, Kashmir, Patiala, Nabha, Jind, Kapurthala, Bahawalpur, Faridkot, Indore, Alwar, Jodhpur, Bhartpur, Bikanir, Jaipur, Gwalior, Rampur, Mysore, Bhopal, Bhaunagar, Junagarh, Nawanagar, Idar, Janjira, Khairpur, Maler Kotla, Sirmur and Tehri. As compared with the former military establishments of the Native states the new plan secures both efficiency and economy,—efficiency, because the officers lent to the states will ensure the uniformity and the harmony of organisation and equipment required by the general system of Imperial defence, and economy, because larger bodies of inefficient levies will be disbanded. It is at least deserving of notice that the measure which is now being tried is that which under a different policy was rejected by the Company in 1788. But when the Governor of Madras informed the Raja of Travancore in that year, that "it is contrary to the system now laid down for the management of the English Company's affairs to lend their officers to command any troops except such as are actually in their own pay and under their own authority," the policy of non-intervention held full sway, and the idea of uniting every Native state in India with the British for the defence of the Empire had not taken root.

§ 87. The account given of the various measures adopted for securing military co-operation, by means

Various categories of military obligations.

of subsidiary forces, contingents, local forces, and Imperial service troops, is a necessary introduction to the consideration of the obligations of the protected princes in respect to the common defence. These obligations fall under two categories, according as they concern a state of war or a state of peace. Under the second category the duties of the allies may be divided into those which affect their own military arrangements and those which are directly or indirectly rendered to the Imperial army. As instances of indirect co-operation, measures for securing regular communication by telegraph, railway, or post, between all parts of the Empire will require consideration.

Unlimited liability of states in time of war.

§ 88. The rights of the Imperial Government, when war is threatened or commenced, may be inferred from the language of the treaties, from the ordinary conditions attached to protection, and from the analogy of other states united for their common defence. The express agreements with Hyderabad and Mysore, which, in the former case, accept the present contingent "as an equivalent for the larger body of troops to be furnished in war," and in the latter case "relieve the Maharaja of the obligation to keep troops ready to serve with the British army when required," are the exceptions which prove the rule. The rule itself is clearly expressed in treaties with the larger sovereignties, and by the principle of "extensive interpretation" becomes an ordinary condition of protection obligatory on all other members of the union. The obligation, imposed on Gwalior by the Treaty of the 27th of February 1804, to provide not merely a contingent "if a war should unfortunately break out between the contracting parties and any other state or power

whatsoever," but also "to employ every further effort for the purpose of bringing into the field the whole force which he may be able to supply from his dominions, with a view to the effectual prosecution and speedy termination of the said war," is free from any ambiguity or reservation. The Maharaja of Indore, in his treaty, dated the 6th of January 1818, undertook "to lend his utmost assistance by the employment of his troops, or in such other manner as may be requisite." The Nawab of Bhopal added to his promise of a contingent an assurance that "Whenever required, and when necessary, the whole of the Bhopal forces shall join the British army, excepting such a portion as may be required for the internal administration of the country." A single quotation affords a type of the duties accepted by the whole of Rajputana when admitted by Lord Hastings into the protectorate. "The troops of the state of Udaipur shall be furnished, according to its means, at the requisition of the British Government," is the short but comprehensive article of the treaty, dated the 13th of January 1818. The Kutch and Baroda states are under similar obligations. At a later date in Indian history, when the state of Kashmir was created, the Maharaja agreed in 1846 "for himself and heirs to join with his whole military force the British troops, when employed within the Hills or in the territories adjoining his possessions." No one who looks down the century and a half of years which have rolled by since the victory at Plassey can fail to find, in every period of Indian treaties, clear evidence of the obligation imposed upon the states to assist the Company to the full extent of their resources in time of necessity. The Viceroys have in this respect followed the precedent set by the Governor-

Generals who preceded them. The Patiala Sanad, given by Lord Canning on the 5th of May 1860, went almost beyond the terms of the Sanad dated the 22nd of September 1847. Its sixth clause ran thus: "If any force hostile to the British Government should appear in this neighbourhood, the Maharaja will co-operate with the British Government and oppose the enemy. He will exert himself to the utmost of his resources in providing carriage and supplies for the British troops according to the requisitions he may receive." It is indeed an essential duty, correlated to the right of protection, that the protected state should co-operate to the full measure of its resources in repelling a common enemy. Even where equal states have united for the general defence, they have surrendered to the central authority supreme authority in disposing of their several forces. The twenty-two Swiss Cantons, under the impulse of their strong centrifugal tendencies, have revised their Constitution five times since the Constitution of the 12th of April 1798 was passed. According to the Constitution, dated the 29th of May 1874, the duties of providing for military instruction and armaments devolve on the Confederation, although the Cantonal authorities are charged with their equipment. The cardinal point in their arrangements is the right of the Confederation to dispose of the army and military material. The Cantonal authorities, prior to 1874, supplied contingents, but their troops are now directly incorporated in the federal army, and their soldiers swear allegiance to the central power as citizens of Switzerland and not as subjects of the Cantonal states.

It is not, however, necessary to look outside Indian history for proof that to the right of protec-

tion is annexed the corresponding duty of providing for the common defence. The state of Datia was, with others of the Bundelkhand states, at first brought into partial union with the Company, and then, after an interval of fourteen years, into the protectorate. Its two treaties of 1804 and 1818 reflect the different obligations attached to its altered relations in respect of the common defence. The position of Bundelkhand, south of the Jumna, and interposed between the Company's territories or system of alliances, and the three Maratha states of Gwalior, Indore, and Nagpore from which danger then threatened, compelled the Company, even in a period when the policy of non-intervention prevailed, to enter into treaties with Datia and Jhansi. Accordingly, when by the Treaty of Bassein and its consequent territorial arrangements, Bundelkhand was, in part, ceded by the Peshwa to the British, General Lake at once concluded an engagement with the ruler of Datia in March 1804. The document recited a profession of the Raja's allegiance to the Peshwa as well as to the Company; and after imposing on him the usual restrictions on the employment of Europeans and on the exercise of his power of negotiation, it affirmed his right to be "in reality the Commander of his own troops." In the fourth article his military obligations were fully described. His co-operation was limited to the countries contiguous to his possessions, and to times of war or disturbance. If, however, it was needed by the Company for quelling disorders in British territories, then the expenses were to be borne by the British Government. With the fall of the Peshwa a new condition of affairs was created. The Treaty of the 31st of July 1818 recited the undertaking of the British to protect Datia territory against

all foreign enemies, and repeated the assurance in another article. "In consideration" of the liberality with which the Raja was treated, "and the protection and guarantee afforded to the Raja's territory, the Raja hereby binds himself to employ his troops, whenever required to do so, in co-operation with those of the British Government, on all occasions in which the interests of the two states may be mutually concerned. On all such occasions the Datia troops shall act under the orders and control of the Commanding officer of the British troops." Another article required him to furnish supplies, or hand over positions to British troops whenever they might enter his territory. A similar obligation was imposed on Samthar, to whose ruler an alliance had been refused in 1804. The interest of these documents lies in the contrast which they present to the earlier treaty, and in the expressed and direct connexion which they establish between the right of protection and the obligation to render the fullest co-operation in time of war.

General restriction as to the strength of Native state armies.

§ 89. This examination of the general and unlimited liability incurred by the protected states for the common defence in times of war, where the liability has not been expressly commuted, prepares the way for a consideration of the obligations of the protected states in times of peace as well as of war. The restrictions upon their sovereign powers in the military department of their own administrations which the rulers of the larger states have expressly accepted, and which all others have by tacit consent or long-established usage similarly admitted, affect the strength of their armies, their system of recruitment, their fortifications, and their armaments. It has already been seen that Lord Ripon, in the instrument which

he gave to Mysore, imposed the following restriction: "The military force employed in the Mysore state for the maintenance of internal order, and the Maharaja's personal dignity, and for any other purposes approved by the Governor-General in Council, shall not exceed the strength which the Governor-General in Council may from time to time fix." The principle of limitation was not only made clear in the treaties with Oudh, but also in the Treaty of Gwalior, dated the 13th of January 1844: "Whereas the British Government is bound by Treaty to protect the person of His Highness the Maharaja, his heirs and successors, and to protect his dominions from foreign invasion, and to quell serious disturbances therein, and the army now maintained by His Highness is of unnecessary amount, embarrassing to His Highness's Government, and the cause of disquietude to neighbouring states, it is therefore agreed that the military force of all arms hereafter to be maintained by His Highness, exclusive of the contingent, shall at no time exceed" the limits then fixed. In 1860 this treaty was abrogated, and a bare clause substituted for it which fixed the strength of the army of Gwalior. To the lessons taught by the battle of Maharajpur had since been added the Sikh wars and the events of the Mutiny, and no chain of argument was needed to justify an obvious precaution. At the same time [illegible] Ellenborough's treaty of 1844 claims attention, [illegible] and set forth the reasons which warrant a restriction upon the armaments kept up by the states of the [illegible] Empire. The threefold interests of the British Government—concerned with the defence, first, of British India, secondly, of the rest of the states in subordinate alliance with the paramount power, and finally, of the particular state itself which can rely

upon British protection,—all contribute to confer upon the British authority the right to settle the strength of the military establishments maintained by each one of the protected princes in the interior of the Empire. In these circumstances, it seems hardly necessary to reproduce other clauses of Indian treaties concluded with Indore in 1818, with Cochin in 1809, with Tonk in 1817, or with Kolhapur in 1826, which deal with the same subject. From the published correspondence, which at various times has been laid before Parliament, it seems that the following principles are generally applied. The armies of the Native states must not exceed in time of peace what is required for the maintenance of the reasonable dignity of the Chief, the enforcement of internal order, and the requirements of the special engagements which they have entered into with the British Government.

Restrictions as to recruitment.

§ 90. In regard to the system of recruitment it appears from the same published records that no system of passing the population generally through the ranks is permitted, and that recruitment is to be confined to the population of the states themselves. From the earliest period of its intercourse with the principalities, the British authorities introduced into their treaties clauses restricting, or prohibiting, the employment of foreign mercenaries, Arabs, Abyssinians, or Vilayatis. The Company found soldiers of fortune commanding bands of plunderers and carving out for themselves principalities by the aid of hired troops. Their determination to put down the profession of swash-bucklers and freebooters would have been fruitless without the co-operation of their protected allies. The official Gazettes, even to a late date, bear testimony to the persistence of the

evil against which they had to contend. A Proclamation, dated the 7th of September 1852, appeared in the Gazette of the Government of Bombay, which introduced a system of passports to "prevent the peace of Native states being endangered by the immigration of Foreign adventurers seeking military service within those territories." By its Act III. of 1864, the Indian Legislature conferred power on the Executive Governments in British India to deport foreigners, and the state of Hyderabad is assisted in restraining the influx of Arabs into it by the co-operation of the British authorities. On the western side of India the evil consequences arising from the employment by Native states of lawless and strong-limbed foreigners have been repeatedly experienced. The Gaikwar was made a prisoner by his own Arab troops in 1802, the Raja of Dharampur suffered the same indignity at a later date, and the disturbances which occurred in Ali Rajpur in 1883 were directly traced to the immigration of Vilayatis. In some Native states, as in Malia, the descendants of alien soldiers have settled in the country, and still enjoy inconvenient concessions and privileges which fear extorted from a former ruler of the country. In Hyderabad, the Arabs domiciled in the Nizam's dominions were strong enough to maintain their exemption from the ordinary tribunals of justice until 1872; and in many parts of India, where states have fallen under British management for any reason, the first measure, taken in the interests of public tranquillity, has been the dismissal or reduction of troublesome foreign mercenaries. In consequence of these experiences the British Government has asserted by treaty in numerous cases, and by usage in others, the general right to forbid or restrict the recruitment of foreign soldiers.

Restrictions on fortifications and equipments.

§ 91. The right of the supreme Government in India to issue directions regarding fortifications and material of war has been frequently asserted. It is naturally correlated to the duty of protection which the British owe to the dependent states, and it results from the surrender by the Indian chiefs of their rights to make war. Since, then, the protected allies require no forts except for internal tranquillity, and no large accumulations of material of war, any hostile equipment of forts or collection of arms would either indicate mistrust or offer a temptation to the lawless classes. For the peace of its own districts, for the removal of a source of danger to neighbouring states, and for the safety of the state in which arms and ammunition are being stored, the Imperial Government must fulfil its accepted responsibilities by intervening to arrest the progress of fortification or by regulating the manufacture and traffic in arms and ammunition. Not only did the experience of the Mutiny illustrate the danger arising from the existence of unnecessary forts which formed rallying-points for the rebels, but even since then the constant revival of religious animosities, over the slaughter of kine or caste disputes, has enforced the need for dismantling forts and controlling stocks of ammunition and firearms. The Mysore instrument only repeats in this respect what other states in India have either expressly or tacitly admitted, when it embodies in article vii. the obligation that the Maharaja "shall not, without the previous sanction of the Governor-General in Council, build any new fortresses or strongholds in the said territories." Again as to arms it proceeds: "The Maharaja shall not, without the previous permission of the Governor-General in Council, import, or permit to be imported, arms,

ammunition, or military stores, and shall prohibit the manufacture of arms, ammunition, and military stores throughout the said territories, or at any specified place therein, whenever required to do so." In the case of those states which were conquered in the Maratha wars or other campaigns, the regulation of their military equipment was as inevitable a consequence of defeat as it was in the case of the French possessions. To the restitution of the French factories and establishments, the condition was annexed by the twelfth article of the Treaty of Paris, dated the 30th of May 1814, that "His most Christian Majesty, wishing to do his utmost to avoid anything which might affect their mutual good understanding, engages not to erect any fortifications" in the establishments, and not to keep any greater number of troops than are required for the preservation of order. Most of the Native states of India are land-locked, but, where any of them possessed access to the sea, the Company either acquired control over their ports, as over Porbandar in 1809, or imposed restrictions on their trade. Thus the Kutch state engaged in 1819 "that no foreign vessels—American, European, or Asiatic—shall be allowed to import into the territory of Kutch arms or military stores. The Honourable Company engages to supply the wants of the Kutch Government in these articles at a fair valuation." The principles which have been applied to all members of the union in this respect are based on the condition common to all, that arms of precision and an accumulation of cannon are required neither for internal safety nor for the exigencies of common defence. Only arms of a suitable kind, and in such quantities as, in the opinion of the British Agent, are really needed, are supplied. If the quantities

are not trifling a statement of them is required by the Government of India, which either supplies them from the public arsenals on payment or expressly authorises their purchase in the market through the agency of the Political officers. No factories for the manufacture of arms or ammunition are permitted without express sanction ; and since the Native states are under an obligation not to keep a larger force than is either necessary or fixed for them, a restriction upon their military equipments is but a logical and reasonable extension of the same principle.

British rights of occupation and cantonment.

§ 92. The services which the King's allies are required to render to the Imperial army, charged with the defence of their states no less than of the British territories, fall under five heads. They comprehend the grant of rights of passage and occupation of forts, of rights of cantonment, of assistance in the matter of supplies, and, fourthly, of the extradition of deserters. Lastly, the British Government must preserve its lines of communication between its forces scattered over the Empire, and it requires, therefore, control over the railway system, the telegraph system, and postal communications, as being vitally connected with the common defence. As to the first of these obligations, a precedent is supplied by article v. of the Convention between Great Britain and the powers of Austria, Russia, and Prussia, which was signed at Paris on the 5th of November 1815. "In order to ensure without restriction to the inhabitants of the United States of the Ionian Isles the advantages resulting from the High Protection under which these states are placed, as well as for the exercise of the rights inherent in the said protection, His Britannic Majesty shall have the right to occupy the fortresses and places of those

states, and to maintain garrisons in the same." So long as the principle of general protection, with all its consequences, was not accepted by the Company, it acquired by special agreement the right of passage or cantonment for its troops. Thus, by the treaty of the 5th of October 1812 with Rewa, a condition of limited protection was established. In fact, the third article expressly laid down that the Raja "shall not possess a claim to the aid of British troops for the support of his authority within the limits of his dominions." Accordingly, by a special clause, it was stipulated that: "Whenever the British Government shall deem it expedient to send its troops into the dominions of the Raja of Rewa, or to station or canton a British force within the Raja's territories, for the purpose of guarding against the advance or intercepting the retreat of an enemy, it shall be competent to the British Government so to detach its troops." The Treaty of Poona, dated the 13th of June 1817, contained several clauses in article xii. on the same subject. When, however, the Protectorate map included the Cis-Sutlej states, the principle of allowing free passage and cantonments to British troops was so obviously implied in the extended right of protection that it was unnecessary to stipulate for what had become a self-evident duty. If more than this was required, it was, of course, obtained by special agreement or direction. Thus the Sanad or patent, dated the 22nd of September 1847, and presented to the Maharaja of Patiala in the Punjab, was silent as to the grant of a passage which was too obvious a duty, but it required the Chief to render a more precise co-operation. "His Highness engages to have made and to keep in repairs, through his own officers, the military roads through his territory

for the passage of British troops, of a width and elevation to be determined on by the Engineer officer." "His Highness will also appoint encamping grounds for British troops at the different stages, which shall be marked off." In the same way, when the Kashmir state was conferred on Ghulab Singh, it was not deemed necessary to express an obvious obligation, although in article vi. of the treaty of 1846 the contingency of the employment of British troops within the Hills or adjoining territories was referred to. It is important to observe, in passing, that the silence of Indian treaties is often as instructive as their expressed terms. For the interpretation of any one of the collection, a study of the whole body of them, as well as of the facts of history which surround them is essential. Where, on the contrary, the occupation of particular forts was required, not in the interests of general defence, but as a special punishment, the intention was declared in express terms. Thus in the Kolhapur Treaty, dated the 15th of March 1829, the admission of British garrisons into the forts of Kolhapur and Panalla was required "as security for future good conduct." The bare grant of a right of passage to British troops, or of a right of cantonment with its essential accessory of full jurisdiction, is a necessary complement to the rights of war and defence which devolve on the paramount power, and requires no tedious justification. It is only in the case of Mysore that circumstances gave occasion for a general summary of all obligations both general and particular; but in the relations of other states much is necessarily left to inference. The instrument of transfer requires the Maharaja not only to allow cantonments "whenever and wherever the Governor-General in Council may consider such cantonments

necessary," but also "to carry out in the lands adjoining British cantonments in the said territories necessary sanitary arrangements." The latter obligation must be regarded as a special accretion to the general principle.

Rights of assistance in procuring supplies.

§ 93. The next right which the British Government may claim from all the states of India is similarly capable of extension by special agreement. A certain measure of assistance to the Imperial army every sovereign, protected by it, must necessarily render. Supplies, especially forage for horses and transport animals, cannot always be carried, and the force which occupies a cantonment or position in foreign territory cannot be kept in an efficient state without relying on the co-operation of the ruler of that country. Within the cantonment British jurisdiction accompanies the force just as it accompanies a maritime army or a ship of war into a foreign port, but outside the limits of the cantonment, the municipal law of the state can alone assist the Commissariat or other British Departments. In the earlier days of the British protectorate, the Company's allies, as the Gaikwar in 1805, the Nizam in 1800, the Peshwa in 1817, Holkar in 1818, the Rao of Kutch in 1819, and the Nawab of Bhopal in 1818, undertook either to supply "such quantities of grain and Benjarees as his resources may afford"; "to store grain in the frontier garrisons" of Hyderabad; to "furnish pasture lands"; to exempt from duties "grain and all other articles of consumption and provision and all sorts of materials for wearing apparel"; to allow "all supplies *bonâ fide* for the use of the Company's troops to pass through the Rao's territories free of Rahdari duties" (a concession which on the 31st of October 1828 was abused, and therefore surrendered

by the Government of Bombay); or "to afford every facility to the British troops in obtaining supplies, and all articles of supply required for them shall be purchased in and pass through the Nawab's territory free of duty." The general obligation is, however, limited to that which is expressed in the Sanad of Mysore, "to give every facility for the provision of supplies and articles required for the troops," whether in cantonment or in the line of march, and to levy no taxes on them without the consent of the British Government. Thus all supplies are paid for at a proper rate, except where sometimes concessions have been specially granted as an act of favour for the appropriation of grazing lands to the use of cavalry regiments or batteries of artillery.

Right to claim extradition of deserters.

§ 94. The obligation of the Native princes to surrender their own subjects deserting from the British army is a duty which they owe to themselves, as being directly concerned in the efficiency of the force maintained for their common defence. On the other hand, while the now abandoned Extradition Treaty between Portuguese and British India, based on the Lisbon Treaty of 1878, was made effective by the passing of the Indian Act IV. of 1880, the Portuguese Government was not bound to surrender its own subjects when deserters. But the Portuguese had no interest in the discipline or efficiency of the British army. With the protected states the circumstances are different, and thus, without express engagement, long-established custom has vested in the paramount power the right to claim the extradition of its military deserters from any Native state. Difficulties may arise where a deserter from the British army has previously deserted from that of a Native state, to whose jurisdiction he has returned after his desertion

from the Imperial army. Again, the deserter may have committed an offence against the law of the state in which he seeks a shelter. It is incumbent on the military authorities to avoid as far as possible enlisting a deserter from a Native state army; but if such a one is enlisted and subsequently deserts, his extradition to the British Government is invariably granted. If, on the other hand, a British soldier whether on furlough or a deserter, commits an offence against the Native state law, he can be punished according to law, and surrendered as a deserter if his extradition is still required after he has carried out his sentence. In dealing with extradition, the sovereigns of native states are very rarely restricted by laws of extradition, and even where occasionally a state has applied in general terms the provisions of the British Act, the law is introduced by the fiat of executive order, so that the same authority can readily make any necessary modifications.

Imperial control over railways, telegraphs, and postal communications.

§ 95. In dealing with the subject of railways, telegraphs, and postal communications, it is evident that the maintenance of an Imperial control can be justified by considerations of common welfare as well as of common defence. The protected princes of India have not, however, entrusted to the Supreme Government a general commission to promote the common welfare in the same sense or to the same extent as they have done where matters of common defence are concerned. But it is clear from the analogy of Nations (for the greater includes the less) and from the terms of Indian treaties, that an intimate connexion between secure communications and military defence must exist, and was always present to the minds of the high contracting authorities. The Swiss Confederation reserves to the Central authority the

right to legislate for the construction and working of railways. To the Federal Government in America are entrusted matters concerning the post office and post roads. In the early days when Indian treaties and engagements were being forged there were neither telegraph nor railway systems. Thus provision for them was not made. But the protection of the roads was from the first an object of solicitude to the Company. The agreements taken from the Kathiawar chiefs, after intervention in 1807, expressly protect the highways, and guarantee the traffic against molestation. In June 1813, the Maharaja of Rewa agreed "to allow dawks to be established through his territory by the officers of the British Government in any direction that may be deemed necessary, to compel his feudatory chiefs to do the same, and to punish them in case of opposition." In 1829, the Raja of Satara ceded part of the road leading from Mahableshwar to the top of the Paur pass, in order that the British communication between Bombay and the Hill station might be preserved. Even with states which remained outside the protectorate and retained their independence the Company concluded agreements for the security of communications. Thus, by the treaty of the 26th of December 1832 with Ranjit Singh, navigation on the Indus and Sutlej was regulated "with a view to promote the general interests of commerce." When, after the transfer of Indian administration to the Crown, the union of the whole Empire was completed, the improvement of interstatal communication became a matter of increasing importance. The bridge over the Chambal led to negotiations with both Gwalior and Dholpur; and several engagements between 1855 and 1883 settled the question of Sindhia's contribution towards

the expenses of the road to Agra. In 1859 the Maharaja of Gwalior granted to the British Government the land required for railway purposes in Nimar, and the Sanads given to Jind and Patiala by Lord Canning in 1860 indicate the growing obligations of the day. "The Raja, as heretofore, will furnish at current rates through the agency of his own officers, the necessary materials required for the construction of railroads, railway stations, and Imperial roads, and bridges. He will also freely give the land required for the construction of railroads and Imperial lines of road." The military operations of the Mutiny had convinced the authorities that certain lines of communication were of "Imperial" concern, and required the co-operation of their protected allies. Finally, the Mysore instrument, which in 1881 brought up to date all obligations both general and special, required the Maharaja to "do his utmost to facilitate the construction and working of lines of telegraph," to "grant free of charge such land as may be required for the construction of railways, and transfer plenary jurisdiction within such lands."

At the same time, the limitations which the supreme Government in India has imposed upon itself in the demands which it makes upon the states for the maintenance of Imperial communications, indicate the care with which matters of common defence are distinguished from those of general welfare. The exclusive right of the British Government to maintain and manage all lines of telegraph or telephone which take public messages has been repeatedly affirmed. Its consent is required before private lines are constructed in the Native states, in order that the Imperial monopoly may be preserved before such lines are set up. In regard to railways which are

not isolated in a Native state, and which form part of the Imperial system of railway, or part of a continuous line of such system, the cession of jurisdiction is invariably required. The main lines of British railways have for the most part been constructed at no other cost to the states which derive immense benefit from them than the free cession of the requisite strip of land, and a guarantee that no duties will be levied on the materials of construction, or on the goods carried by the railway, or in transit from other states or territories to it.

It frequently happens that a line of railway passes through the jurisdiction of several states besides that of the British Government, and even in times of public tranquillity a constant break of jurisdictional gauge would prevent through-booking, give rise to interminable disputes where goods are lost or injured in transit, and endanger the lives of passengers. Where the passage of troops is concerned, or the sudden requirements of the public peace and general defence involve prompt movements, graver interests are involved; and the military responsibilities which the paramount power has undertaken could not be fulfilled without its assertion of the right of control and jurisdiction over all through lines of railway.

From the earliest days, and when as yet India was not covered with a network of railways, the protection of the Imperial mails carried by road was a general obligation that devolved on the states. The obligation is not weakened by the mere fact that the mails are conveyed by rail instead of by dawks or posts. The idea of the responsibility of rulers or of communities for loss of property due to a defective discharge of public duties was familiar to Hindu law before the British advent. The Company's

laws embodied the popular idea in their regulations, which imposed on village and local communities fines for losses due to gross neglect of duty or connivance with robbers. The mail robbery rules, which were last revised in 1885, give to the Native states every opportunity of rebutting the presumption of blame which attaches to them for the loss of Imperial mails in transit through their territories. Where the blame is brought home to them, compensation and penalties are exacted. By these means communication between the various parts of the Empire is preserved, as far as possible, against a risk of interruption or collapse which would materially weaken the capacity of the Imperial Government to discharge the duties of common defence which it has undertaken.

CHAPTER IX

OBLIGATIONS AFFECTING EXTERNAL RELATIONS

The states have lost their international life.

§ 96. WHILST the entire liabilities and duties of the Native states other than Hyderabad and Mysore in the matter of the common defence have not been defined, so that the cheque which the protecting power holds against their resources in time of war remains still a blank, their obligations in regard to external relations admit of no doubt. The sovereigns of the principalities enclosed within the frontiers of the Empire do not exercise individually any independent action in negotiations either with foreign powers or with each other. In this the most important limb of international life they possess no vitality whatsoever. Their position in this respect presents a contrast to that of some of the united organisations to which they have been compared in the preceding chapters, and to the states that lie outside the union. The sovereign Princes of Germany, by the Final Act of the 15th of May 1820, were permitted, under the organisation of the National League, to accredit and receive resident plenipotentiaries for the superintendence of their separate international relations with non-Germanic powers. The Swiss Cantons cannot enter into alliances with each other on political matters, but they may con-

clude, according to article vii. of the Confederation, conventions relating to administrative matters, justice, and legislation, and in special cases certain treaties with foreign powers under article ix., provided that they do not invade the rights of other Cantons or the *constitution fédérale.* The semi-sovereign "United States of the Ionian Islands," under the convention of the 5th of November 1815, received commercial agents or consuls charged exclusively with the care of commercial relations accredited to those states, and subject to the same regulations to, which similar agents are subject in independent states. The external state of Nepal, although in alliance with the British Government, concluded a Treaty of Peace on the 24th of March 1856 with Tibet. But the rulers of the Native states in the interior of India have not a shred, or semblance, of contractual authority left to them. They cannot enter into a treaty of extradition with their neighbours without the intervention of the British authority; they cannot receive commercial agents; they are even unable to allow Europeans or Americans to enter their service without the consent of the paramount power; they have no direct intercourse with the consular agents or representatives of foreign nations accredited to the Government of India; and they cannot receive from foreign Sovereigns Decorations or Orders except under the regulations prescribed for British subjects. They have, in short, no official relations with other protected states of India; and even where the interests of two or more of them are identical upon any particular question, their representations to the supreme Government would be conveyed in separate memorials, and not in a joint petition. The sole representative of the Native states in their intercourse

with foreign nations, or with each other, is the British Government.

Evidence of the general disability.

§ 97. The first part of this disability has been recognised by Parliament, and the second both by convention and by an unbroken course of action pursued by the Governments of India. The principle affirmed in a previous chapter of the necessity for reading all Indian treaties together, and of the value of established usage as a source of rights, is in respect to rights of negotiation confirmed by the highest authority. Not more than fifty-five engagements with the existing states of India, which number about 680, expressly prohibit correspondence or negotiation with other powers or states. But the extension of the disability to the rest is justified by the identical character of their relations, by long-established usage, and by the fact that the arguments, which induced the Company to impose even on its favoured allies the loss of independence in external affairs, apply with greater force to the later additions to the protectorate. Extracts from a few of the leading treaties will suffice to indicate the grounds of this policy. In the Treaty of Hyderabad, dated the 12th of October 1800, article xv. runs as follows: "As by the present Treaty the union and friendship of the two states are so firmly cemented as that they may be considered as one and the same, His Highness the Nizam engages neither to commence, nor to pursue in future, any negotiations with any other Power whatever without giving previous notice, and entering into mutual consultation with the Honourable Company's Government." The next article went still farther, and after a recital of the fact that "mutual defence and protection against all enemies are established," it declared that, "in the event of any

differences arising, whatever adjustment of them the Company's Government, weighing matters in the scale of truth and justice, may determine, shall meet with full approbation and acquiescence." The Treaty of Burhanpur with Sindhia, dated the 27th of February 1804, enforced a similar isolation in the 8th and 9th articles, but the words were qualified to cover negotiations "with any principal states or powers." For at that date the policy of the ring-fence was in the ascendant, and Rajputana lay outside the protectorate map. When, however, under altered conditions, the Treaty of Mandasor was concluded in 1818 with Holkar, who ruled over the neighbouring Maratha state of Indore, article ix. expressed the change in these terms: "In the event of differences arising, whatever adjustment the Company's Government, weighing matters in the scale of truth and justice, may determine, shall have the Maharaja's entire acquiescence. The Maharaja agrees not to send, or receive, Vakeels from any other state, or to have communication with any other states, except with the knowledge and consent of the British Resident." When as yet the Peshwa had not resigned his sovereignty, and whilst Sindhia and the other Maratha states still professed allegiance to him, the Head of the Confederacy subscribed, in 1802, to article xvii. of the Treaty of Bassein, by which he engaged "neither to commence nor to pursue, in future, any negotiations with any other power whatever without giving previous notice, and entering into mutual consultation with the Honourable East India Company's Government." The spirit of the policy of subordinate isolation was expressed in the numerous treaties negotiated by Lord Hastings, of which the Udaipur Treaty, dated the 13th of January 1818, is a suitable illustration. "The Maharana of Oudeypore

will not enter into any negotiation with any chief or state without the knowledge and sanction of the British Government; but his usual amicable correspondence with friends and relations shall continue." The next article continued: "The Maharana shall not commit aggressions upon any one, and if by accident a dispute arise with any one, it shall be submitted to the arbitration and award of the British Government." Private correspondence was not always exempted. In the year following the conclusion of the treaty just noticed Lord Hastings created the Satara state and imposed upon His Highness not only the obligation "to forbear from all intercourse with foreign powers, and with all Sirdars, Jaghiredars, Chiefs, and Ministers, and all persons of whatever description who are not by the above articles rendered subject to His Highness's authority," but even the further duty of sending his communications on matrimonial or other private matters with persons not so subject to his authority, "entirely through the Political agent." The caution was added, that "this article is a fundamental condition of the present agreement." The two agreements with Kolhapur, that dated October 1812, which bound His Highness to submit his differences to the adjustment of the Company, and that dated October 1862, which contained this article, "that the Raja's Durbar should send its correspondence with other Courts through the Political agent," indicate not merely a failure on the part of that state to act up to the spirit of the earlier agreement, but the general alteration which the course of years had introduced into British relations with the states at two widely differing periods. The obligation imposed on Mysore in 1881 explains the existing position of all the states: "The Maharaja shall abstain

from interference in the affairs of any other state or power, and shall have no communication or correspondence with any other state or power, except with the previous sanction and through the medium of the Governor-General in Council."

It is hardly necessary to justify by argument the position of inaction in which the Native states are, as a matter of fact, placed not only by the treaties quoted, but also by the extension of the disability to other states without treaties, and by the interpretations which long usage has grafted upon the clauses of the earlier treaties. The responsibilities of the supreme Government would be dangerously enlarged if even the 261 more important princes of India were permitted to enter into transactions with foreign powers. For all international purposes, at any rate, the whole Empire, including the protected states united to it, must be regarded as one Nation represented by the British Government. That such is the fact was recognised by Parliament in 1876, when in its Statute 39 and 40 Vic. cap. xlvi. it described the present state of affairs in these terms: "Whereas the several Princes and states in India, in alliance with Her Majesty, have no connexions, engagements, or communications with foreign powers." The Statute was confined to negotiations with foreign nations, but for a similar declaration of the incapacity of the states to negotiate with their neighbours, the other protected states in India, a reference can be made to the declarations of the Indian Government published in correspondence presented to Parliament. The disability is indeed so well established that it has been accepted by writers of International law, as by Twiss, who writes in Section 26 of his *Treatise*

on the Rights of Nations in Time of Peace: "The Native states of India are instances of protected dependent states, maintaining the most varied relations with the British Government under compacts with the East India Company. All these states acknowledge the supremacy of the British Government, and some of them admit its right to interfere in their internal affairs, insomuch as the East India Company had become virtually sovereign over them. None of these states hold any political intercourse with one another or with foreign powers."

Obligations of the states, both abroad and within their own jurisdictions.

§ 98. The consequences of depriving the rulers of Indian principalities of those powers of negotiation and legation which form an essential part of a full complement of sovereign attributes, must now be considered. It is convenient to deal first with their relations to foreign nations or independent states, leaving for a later stage their relations to other Indian states as incapable as themselves of entering into relations with external powers or states. Inasmuch as to every duty belongs a corresponding right, the duty of subordination in all international concerns, owed by the protected states to the British Government, can be examined in the light which that Government owes to its allies in the matters of protection abroad, passports, and the exercise of the right of legation. The protected princes of India enjoy the benefits secured, and must accept the liabilities incurred by the diplomatic action of the Crown. The fourth section of the Statute 39 and 40 Vic. cap. xlvi. put the matter in these terms: "Whereas by certain Orders of Her Majesty in Council made by virtue of an Act made and passed in the Session of Parliament holden in the sixth and seventh years of Her Majesty's Reign, chapter xciv., which

Orders are dated respectively August 9th, 1866, and November 4th, 1867, it is ordered that the provisions of such Orders relating to British subjects shall extend and apply to all subjects of Her Majesty whether by Birth or Naturalisation, and also to all persons enjoying Her Majesty's protection in the several dominions mentioned in such Orders respectively: it is hereby declared and enacted that, for the purposes of the said Orders in Council, or of any Orders in Council, which Her Majesty may hereafter think fit to make by virtue of the said Act of the sixth and seventh years of Her Majesty's Reign, chapter xciv., all subjects of the several princes and states in India in alliance with Her Majesty, residing and being in the several dominions comprised in such Orders respectively, are and shall be deemed to be persons enjoying Her Majesty's Protection therein."

The section just quoted was repealed by 53 and 54 Vic. cap. xxxvii. section 18, a statute which also enacted that where any order in Council made under it extends to persons enjoying Her Majesty's protection, "that expression shall include all subjects of the several princes and states in India." The position, therefore, is this, firstly, that in foreign countries where an offence is created, as for instance in regard to the slave trade, the subjects of the Native states become liable together with British subjects to the consular courts established for the trial of such offences. This involves no serious derogation from the internal sovereignty of the princes of India. For it is obvious that the existence of local jurisdiction and of certain attributes of sovereignty, within the defined territorial area of a lordship or principality, is compatible with an eminent overlordship ordinarily suspended within the said area,

whilst active and exercised outside the limits of the Native state.

But a further result has still to be considered. The semi-sovereign prince must not only suffer the paramount power to exercise foreign jurisdiction over his subjects abroad, he must also co-operate by action taken within his own domestic jurisdiction. It has already been seen that when parliament forbade British subjects to advance certain loans to Native princes, its legislation required corresponding action by the princes themselves. So, too, the diplomatic acts of the King-Emperor entail co-operation in the Native states by their rulers, and such was the case when the slave trade was dealt with by the statute of 1876. Kutch subjects trade with Zanzibar, and whilst there enjoy His Majesty's protection. When the traffic in slaves was prohibited, they were obliged to conform to the prohibition. But still slave-traders might escape to Kutch, and ceasing "to reside or be" in Zanzibar, they might revert to their status of subjects of Kutch, and avoid the penalties to which they were liable so long as they remained under British jurisdiction as well as protection. The Imperial authority must, therefore, pursue them to Kutch, and the immediate sovereign or lord over Kutchi subjects out of Zanzibar must give effect to the decree of his overlord. Accordingly, on the 24th of April 1869, the Rao of Kutch informed his subjects "that the perpetrators" of the slave-trade would "be punished there according to the law there prevailing, and you will also be considered as criminals, liable to punishment here in my domain." In December 1872, a further Proclamation warned Kutch subjects that, "He who, in spite of this, shall follow this trade, or in any way abet or assist in the same, shall be punished severely by the

Honourable British Government, considering him to be their own subject, by virtue of the power given them for the purpose, and this Durbar will confiscate all his property in Kutch." Other obligations in the matter of recruitment and extradition will be noticed in their proper place. They illustrate the principle that the Native states, by parting with their rights of negotiation, have not only conceded to the British Government the right to protect and govern their subjects when resident or found abroad, but have also obliged themselves, within the area of their own jurisdiction, to assist the Imperial policy, and to give practical effect to the engagements which the British Government enters into with foreign powers in its capacity of International representative of the United Empire of India.

Protection of Native state subjects abroad under treaties or Orders in Council.

§ 99. Abundant instances may be cited of the protection accorded by the King's Government to the persons and property of the subjects of the several states of India when resident in or visiting foreign countries. The British Government has acquired and exercises abroad in several non-Christian countries a personal jurisdiction over its subjects, just as in the Native states of India it exercises jurisdiction over Europeans residing or being there. To this jurisdiction the subjects of Native states are entitled. Thus, in 1873, the Sultan of Maskat, in the Persian Gulf, agreed that "subjects of the Native states of India who may commit offences within the Maskat dominions shall be amenable to the Political agent and Consul's Court in the same way as British subjects." He further agreed that the words "British subjects," in all treaties between the English Government and his state, "shall include subjects of Native Indian states." In the same way, by article 9 of the

Yarkand Treaty, dated the 2nd of February 1874, it is provided that "the rights and privileges enjoyed within the dominions of His Highness the Amir by British subjects under the Treaty, shall extend to the subjects of all Princes and states in India in alliance with Her Majesty the Queen; and if, with respect to any such Prince or state, any other provisions relating to this Treaty or other matter should be desirable, they shall be negotiated through the British Government." The Queen's Order in Council, making provision for the exercise of jurisdiction in the dominions and dependencies of Zanzibar, dated the 29th of November 1884, applies to all subjects who may be British by birth or naturalisation, and also to all persons enjoying British protection in the dominions of the Sultan. The British Consul is accordingly required to keep a register of "all Natives of British protected states in India who may claim British protection."

Unfortunately it is not always possible to secure for the subjects of Native states residing in or visiting some dominions of the British Empire the same privileges as are accorded to subjects of the King of British extraction, whether born within the United Kingdom or in the colonies and oversea dominions of the Empire. If those dominions in the exercise of their own legislative powers choose to make a distinction between European and Asiatic subjects of the King, their power to do what they will with their own country's law cannot be questioned. But it is a fact that the position of the subjects of Native states therein is the same as that of the Indian British subjects of the Crown; and it may certainly be added that if the Native states possessed the power of negotiation, they would not be able to alter the position of their own people in the dominions referred to.

§ 100. The protection of the subjects of the Native states in foreign territories is not confined to consular jurisdiction or to matters for which treaties specially provide. The subjects of the protected states are granted passports when they proceed abroad on business or pleasure. These passports are useful as a protection in the event of war, and entitle their holders to official assistance in case of necessity. They certify that "the bearer is a subject of the state of . . . a state in India in subordinate alliance with Her Majesty, and as such is entitled to Her Majesty's protection." Should there chance to be no representative of British authority in the country visited, the protection of British subjects delegated to any Foreign Government would be extended to the Native subjects of the Indian states in their character of protected British Indian subjects. The maritime states of India are few in number, but Kutch boats visit Africa and Mozambique in certain seasons. The Portuguese authorities at that port require that crews should carry articles of agreement and lists of crews. Accordingly, persons engaged as crews on Kutch vessels appear before the Political agent at Bhuj, and on arrival at any port where there is a British Consul they deposit their agreements with him, correct them and the lists if necessary, and seek his intervention if any dispute arises. The principle that the British Consul at Mozambique is the proper representative of Kutch interests and Kutch subjects is thus publicly asserted. Again, it rests entirely with the Crown to receive in India the accredited agents of Foreign Governments, and to annex to their reception such conditions as it thinks fit. The Consular agents of Foreign Governments have no direct communication with the rulers of the protected states, and if such

Protection under passports or by consular officers.

agents require from the Native sovereigns any assistance or satisfaction, they must address themselves to the British Government which has exclusive charge of the foreign relations of every Native state. Conversely, when the Native state of Junagarh has had reason to complain of aggressions from the Portuguese colony at Diu, and has desired a settlement of its disputes with the Portuguese authorities and their Indian subjects, the Government of Bombay has represented the interests of His Highness the Nawab, and conducted the negotiations on behalf of its ally.

Obligations flowing from the source of British international action.

§ 101. Inasmuch as the Native states, by the delegation or surrender of their rights of negotiation and legation, have obtained for their subjects the protection and diplomatic services which are rendered to British subjects either by the courtesy of nations or by express treaty, it is obvious that they must loyally fulfil all the conditions that are usually or specially attached to the privileges so granted by other nations. Whilst enjoying in foreign countries the status of British protected persons, the subjects of the several states of India must conform to the laws and rules of conduct that apply to them. Their rulers also are bound by obligations in return for the consideration extended to their subjects. If they enjoy the fruits of the diplomatic action of the King's Government, they must share the liabilities and obligations which flow through the central power from the friendly intercourse of nations. Three instances of such obligations may be given, affecting respectively the treatment of foreigners in their principalities, the surrender of fugitive criminals, and recruitment in time of war. These duties are samples of those which flow from the source of international engagement, and must not be regarded as an exhaustive list; for it is

obvious that in this respect the account of the price which the protected princes pay for the union cannot be closed so long as their rights of negotiation are being continually exercised for them by the supreme power.

Jurisdiction over Europeans and Americans in the Native states.

§ 102. The duty which a nation, or independent state, owes to its own subjects extends to their protection in foreign countries; and European nations have long recognised the obligation to see that their subjects are not deprived of life or liberty outside their territorial jurisdiction, except by due and proper process of law. Christian states attach to certain principles of their legal systems so paramount an importance that they are unable to regard a departure from them as a "due and proper process." If the courts of a country attribute to the oath of a Muhammadan a greater value than they give to the oath of a Christian or other person professing another religion; if they protect the person of a Brahman by sanctions refused to others; or if they punish the slaughter of an animal as a crime not less heinous than manslaughter, a Christian country feels justified in interference. Accordingly, the civilised powers of Europe have asserted against various non-Christian countries a right to try or punish their own subjects resorting to such countries according to the spirit of the society and jurisprudence to which they are accustomed. The arguments in favour of the exercise of extra-territorial jurisdiction over persons, under what are termed Capitulations, were lately stated by the Italian Government, in a published document, in these terms: "En effet les Capitulations ont eu pour origine la nécessité d'opposer au droit musulman l'Empire du droit chrétien pour les sujets des Puissances européennes résidant dans les États

musulmans. Elles présupposent contre le peuple ayant la domination territoriale et ceux pour lesquels elles ont été stipulées une différence sous le rapport de la religion, des coûtumes, des lois, et des usages." When the country to which Capitulations apply falls under the protection and control of a Christian Government, or when, as in Siam, a system of justice and procedure is introduced which is wholly acceptable to the nation enjoying foreign jurisdiction, the necessity for them at once ceases. Thus, England adopted this view in the case of Tunis; and, in 1888, Italy asserted the same principle in regard to Massowah. Supposing that the Native states of India possessed International life, it cannot be doubted that European powers would insist on the trial of their subjects, residing or being in them, according to systems of law which they are accustomed to regard as civilised. The British Government which shields the states from the diplomatic fetters forged for Egypt by the rivalry of European powers, is bound to satisfy other nations that their subjects will be justly treated.

From another point of view its interference is justified. The larger states of India by treaty, and the rest of them by tacit understanding and usage, have agreed not to employ Europeans without the sanction of the British Government. Some have agreed not to permit the subjects of Western nations to reside in them without permission. The law of India empowers the Governments of the provinces to deport foreigners, and the supreme Government, which has equipped itself with such exceptional powers and has imposed on its allies these restrictions, can give complete effect to its Imperial policy only by requiring the Native states to co-operate with it.

The assertion, therefore, by the British Government of the right to try Europeans and Americans for offences committed in the Native states is perfectly reasonable and necessary. It is reasonable, because Parliament has armed the Indian Legislature with the power of legislating for British subjects in Native states, and a protection which Parliament accords to British European subjects is equally due to other Europeans and to Americans. It is necessary, because the British Government refuses to foreign nations the right of making treaties or Capitulations with the protected sovereigns of India, and therefore it should provide by administrative measures a system of justice to which Foreign powers can take no exception on behalf of their subjects.

As to the general policy of assuming full jurisdiction over the subjects of American or European powers when residing in the Native states no difference of opinion is likely to arise; but the provision of a remedy is a more difficult matter. Parliament, as Lord Campbell remarked in 1843 in the case of the ship *Guiana*, "has no general power to legislate for foreigners out of the dominions and beyond the jurisdiction of the British Crown." In another case, Papayanni *v.* the Russian Steam Navigation Company, it was held that an authority to administer jurisdiction over the subjects of a foreign nation could not be conferred upon another nation by the country which had municipal jurisdiction over them. But in India both difficulties are solved. Since the Native states, no longer independent, have parted with their diplomatic rights, it is the British Government which entrusts to itself on their behalf the required jurisdiction. The aid of Parliament or of the Indian legislature is not needed, since the

Governor-General in Council by cession, or other lawful means, exercises jurisdiction by means of his political officers within the protected states, and the Native sovereigns are relieved of all difficulties. It is not even necessary to consult the states on the subject of each case as it arises, since any diplomatic representations arising out of such trials would be addressed to the British Government, which answers for the Native states in all international concerns. It may excite the surprise of those who have studied the Mysore instrument of transfer to find that the somewhat extended obligations of the Mysore Government make no direct mention of the European subjects of foreign nations, although they expressly reserve plenary criminal jurisdiction over European British subjects, and prohibit the employment of any person not a native of India. But they contain a clause which compels the Maharaja to conform to the advice of the Government of India in the administration of justice, and ample security is thus obtained for the disposal of any difficulty which may arise in connexion with the trial of a foreign European subject. On the other hand, the undertaking of the Government of Hyderabad, dated the 10th of July 1861, which dealt with the descendants of Europeans whose status in British India is that of Statutory Natives, included all Europeans. His Highness the Nizam then notified that, "Whereas many Europeans, foreigners and others, descendants of Europeans, and born in India, are resident in the territory of His Highness the Nizam, and as disturbances arise amongst themselves and the inhabitants of the said territory, it is hereby made known that, in the event of any dissension or dispute arising among the classes aforenamed within the said

territory, except those employed by the Sirkar and its dependants, the Resident at Hyderabad, or other officer whom he may consider it desirable to vest with the same, shall be empowered to inquire into and punish any such offences." A jurisdiction which the premier state in India has thus expressly conceded over the domiciled descendants of Europeans to a British Court would not be challenged elsewhere.

Obligations to extradite foreign fugitive offenders.

§ 103. Elsewhere the subject of extradition will be fully discussed, but in dealing with the obligations owed by Native states to foreign powers some mention must be made of their duty to surrender foreign fugitive offenders. The British Government frequently has occasion to procure the extradition by the native chiefs of suspected offenders who have broken British laws. As charged with the foreign relations of each state in India, it may also be required to procure for one state the extradition of its fugitive offenders from another state in which they have sought an asylum; or having entered into an engagement with foreign nations it may be called upon to perform a like service on the requisition of such nations. Thus, by a Treaty with Germany, dated the 14th of May 1872, the British nation has agreed to surrender a fugitive criminal charged with obtaining money or goods by false pretences. By Her Majesty's Order in Council, dated the 25th of June 1872, legal effect is given to the treaty, and the provisions of the fugitive offenders Acts have been brought into operation. It sometimes happens that the accused, having fled from Germany to India, escapes from British India into the foreign jurisdiction of a Native state. In such a case, although the Acts of Parliament cannot reach the Native state, and although no special treaty subsists

between the Native state and the Indian Government on the subject, the Government of India would properly require the surrender of the accused taking refuge in a protected state and demand his extradition. The source of obligation so devolving upon the Native state is its connexion with the British Government and its delegation to the Government of all rights of negotiation. The duty which the British Government has incurred of surrendering the accused to Germany is not discharged without the co-operation of the protected states, with which the German Government can enter into no convention on the subject. If the hand of British law cannot directly reach the offender outside its own jurisdiction, the state which harbours the fugitive must produce him on British soil where he can then be dealt with according to law.

Obligations in the matter of recruitment for foreign service.

§ 104. Another instance of diplomatic obligation is suggested by the legislation of the British Parliament on the subject of foreign enlistment. If the Native states must perform their share of Imperial duties in time of peace, they must equally render co-operation during the stress of hostilities. When the paramount power, which represents them in foreign relations, is neutral in time of war, its obligations of neutrality necessarily affect the states of India, which must not supply arms, ammunition, or recruits to either of the belligerents. In 1870 Parliament passed the Statute 33 and 34 Vic. cap. xc., an Act "to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace." Illegal enlistment, illegal shipbuilding, and illegal expeditions were defined and prohibited. The Act was to be proclaimed in every British possession as

soon as possible, and to come into operation on the day of such proclamation. It was accordingly proclaimed in India in 1871. Soon afterwards the law of India was shown to be inadequate to secure the due observance of the Imperial Act. The Statute of Parliament operates only in time of war, and it was found that Pathans and other warlike classes of India were recruited for foreign service before hostilities were declared. The Indian Act IV. of 1874 accordingly empowered the Governor-General in Council to prohibit recruitment in India for the service of foreign states. Enlistment can thus be prevented in time of peace, or in anticipation of the outbreak of war. But neither Parliament nor the Indian Legislature has power to legislate for territories not subject to His Majesty, and the only means of enforcing the legislation referred to, in the Native states, is by the co-operation of the princes in subordinate alliance with His Majesty. That co-operation the supreme Government in India has the right to exact. Similar obligations have at times devolved on the Native states in connexion with the proceedings of the Brussels Conference, and with the regulations adopted by European nations for the suppression of the slave traffic in Africa. They illustrate the duties which the protected states owe to the central power of the Indian Empire, and they must be taken into account as part of the price they pay for the privileges of union and British protection.

Disability of the states to negotiate with each other.

§ 105. The Government of India also represents the states in their intercourse with each other, in interstatal as well as in international transactions. The states are isolated in regard to their neighbours as completely as they are in regard to foreign nations. They cannot declare war on each other,

nor can they make treaties with each other or negotiate exchanges of territory. In the same way, no American state can, as a commonwealth, politically deal with or act against any other state. Such liberty of intercourse and negotiation as is reserved to the Cantonal authorities in Switzerland is subject to strict limitations by the federal Compact. If, then, serious differences arise between two Indian states, it is their duty to convey the earliest intimation of the facts to the supreme Government in order that it may effect a settlement. This obligation is expressed in their engagements in the case of those states whose policy has been most aggressive, but it is a duty which devolves upon all, irrespectively of treaty, by reason of their relations with the British Government. The state of Kutch has maintained for more than a century an aggravated quarrel with the Kathiawar states of Morvi and Nawanagar. Its treaty, dated the 13th of October 1819, contains a clause that "The Rao, his heirs and successors, engage not to commit aggressions on any Chief or State, and if any disputes with any such Chief or State accidentally arise, they are to be submitted for adjustment to the arbitration of the Honourable Company." Whenever, therefore, the chronic disputes of Kutch and Morvi have entered into an acute phase, the British Government has promptly appointed Commissioners to examine the facts, and has declared and enforced its decision. The Rao of Kutch has been assured by one clause of his treaties that the British Government will not interfere in his internal administration, but, where this assurance conflicts with the obligation to accept the adjustment of Government in any interstatal dispute, temporary interference with his administra-

tion of his Kathiawar interests must of necessity be exercised.

The history of British relations with the Native states supplies numerous instances of the rigid application of the principle, that all interstatal disputes must be settled by the supreme Government, and that one state must not intervene in the internal troubles of another. The Company sought to introduce a new era of peace and to blot out old animosities, but the task was one which presented many difficulties. Thus the ruler of Jodhpur, with which state the Marquis of Hastings concluded a treaty of subordinate co-operation in 1818, entered the British protectorate smarting under resentment at the treatment he had recently received from Jaipur, and at the support given to his rival by some of the nobles of his state. It was to be expected that, when his own position was strengthened by British protection, he should endeavour to use his authority against those who had shown disaffection to him. The British Government, however, interfered; and in 1824 the Maharaja was called upon, and agreed to restore the estates confiscated by him to certain chiefs, "although they are not fit objects of mercy, nevertheless, in order to please the British Government." Others, who were not admitted to favour, organised a rebellion against the Maharaja, using Jaipur as a basis of hostile operations, not without the support of that state which had been unable to resist the temptation of causing trouble to its ancient foe. Severe notice was at once taken of the conduct of Jaipur, and not long afterwards the British authorities took the extreme step of intervening in the administration of both these states. In other principalities the force of

the dynastic jealousies and traditional quarrels which the Company inherited from the past was not spent when the Crown assumed responsibility for Indian administration. In 1866 and again in 1873 the Maharawal of Banswara incurred the severe displeasure of the Viceroy. On the former occasion he trumped up a false charge against his feudatory chief of Khushalgarh, for which he was fined and punished by a temporary reduction of his salute. On the latter occasion, he attacked a border village belonging to Partabgarh, and was again punished by the continued withdrawal of his full salute. In the case of Tonk, a state originally carved out of Malwa by the great Pindari leader, Amir Khan, who was reclaimed from his predatory habits by the confirmation of the Company to his acquisitions, the action of the supreme Government was more decisive. The grandson of Amir Khan, as the Proclamation issued by the Viceroy on the 14th of November 1867 announced, perpetrated an outrage on the person of the uncle and certain followers of the chief of Lawa. The Viceroy therefore resolved, "as a punishment of this crime," that the Nawab should be deposed and that Lawa should become "a separate chiefship, and so remain for ever under the protection of the British Government." Rajputana had obtained an unenviable notoriety for scenes of disorder, and the Proclamation gave expression to the "hope that the present lesson will not be lost upon the country, but that it will lead, both in Tonk and throughout the Province of Rajasthan, to the well-being and prosperity of all concerned, both of those who govern and of the people." The punishment inflicted in this case for what was intentionally described as a "crime,"

was no doubt intended to be more exemplary than retributive, but it serves as an illustration of the "fundamental condition," as Lord Hastings termed it in the Treaty of Satara, that all communications with other states must be made through the British Government.

§ 106. The form into which arrangements between one state and another are thrown reflects the principle that the British Government acts for the protected sovereigns in their intercourse with each other, and that they can have no direct negotiations with another state. Thus, when Kutch and Nawanagar were prepared to exempt from export duty jettisoned goods washed from the waters of the Runn on to the shores of their respective territories, it was suggested that the object might be attained by a set of rules framed in the name of the British Government and accepted by the two states, or in separate engagements by which each state could pledge itself to the British Government to grant the exemption. Some of the more enlightened Chiefs of India have in recent years shown a laudable desire to terminate their inherited disputes by territorial exchanges, as for instance Lunawara and Balasinore, and Bhartpur and Alwar. The framework of the arrangement concluded between the last-mentioned states affords a good illustration of the manner in which such engagements are drawn. It begins by a recital of the objects of negotiation. "Whereas a difference of opinion has arisen between the Bhartpur and Alwar states regarding the use of the water of the Rupareil river; and whereas it is expedient, in the interests of the two states, that the matter be adjusted; and whereas this can best be effected by a territorial exchange." After the recital comes the undertaking of the supreme Government. "The

Form of interstatal arrangements.

Governor-General in Council has, with the consent of the states of Bhartpur and Alwar, made the following arrangements." Then the clauses detail the arrangements, showing what lands each state transfers wholly, unreservedly, and in perpetuity, to the other state, and the date from which the arrangement is to take effect.

Beneficial results of the loss of negotiations.

§ 107. There is no need to travel beyond the history of modern India for proof that the Native chiefs have by the surrender of their rights of negotiation saved their principalities from grave dangers. The tributary obligations of the Rajput houses were rapidly and ill-advisedly concluded during the period when the Company stood on one side and left them to settle their affairs with the Marathas. The annexation of the Punjab states and large estates by Ranjit Singh was the first step taken by His Highness, when he commenced the task of consolidating a friendly buffer-state from which Lord Cornwallis anticipated the best results. By the year 1836 his claims against Sind had reached twelve lakhs of rupees, and would have been enforced by the invasion of Shikarpur if the Company had not intervened. Agreements were signed by weaker states as the readiest means for averting an immediate danger, and with no intention of observing them. The suzerain states were never backward in issuing titles, Firmans, and Sanads, provided that the claimants were prepared to pay for them. From the 25th of December 1771, when the Marathas conducted Shah Alam in pomp to Delhi, until Lord Lake released the Emperor in 1803, his paper grants were issued on the demand of his keepers. The claims which a Maharaja in Western India asserted against neighbouring chiefs of the same agency were supported by ancient documents, which

many years afterwards were proved to be interpolated and untrustworthy, although their execution was, through ignorance and fear, admitted by the descendants of the Thakores from whom they were extorted. At the period when the Indian states were included in the protectorate, and resigned their rights of negotiation, they were not fit to be trusted with such dangerous powers, and their surrender of their sovereign rights saved them from themselves. Public conceptions of the sanctity of interstatal obligations have greatly improved, but even in the present day partiality, pecuniary necessities, or misconception might prejudice contracts. Such influences are happily neutralised by the wholesome rule which requires interstatal arrangements to be executed through the intervention of an impartial Government, which desires only the perpetuation of Native rule and the prosperity of the King's allies.

CHAPTER X

OBLIGATIONS AFFECTING INTERNAL ADMINISTRATION

The phrase "obligation" needs justification.

§ 108. The princes and chiefs of India have parted with many of the attributes of sovereignty, but they jealously and properly guard those which they have retained in their own hands. They have resigned their rights of peace and war and charged the supreme Government with the duty of protecting them from foreign foes. In return, the supreme authority has the right to insist on their co-operation for the common defence. They have absolutely surrendered their rights of negotiation, confederacy, and legation, and since they are partners in the benefits secured by the international and interstatal action of the British Government, they must fulfil the obligations attached to the rights derived from such action. But, except in certain special circumstances for which their treaties expressly provide, they have not entrusted to the supreme Government any right of interference in their internal administrations. How comes it, then, that the whole body of the Native states have incurred obligations that admit of interference in the course of their Home affairs? The question brings one dangerously near the quicksands of "acts of state" or "public interests," yet it cannot honestly be shirked. It is one of vital concern to the Native

sovereigns, who cling tenaciously to those attributes of the status of sovereignty with which they have not expressly parted, and it is one on which *Blue-Books* shed the most light. No parallel, it must be admitted, can be found in the body of Indian treaties to the commission entrusted to the Federal Constitution of America, which commences with this preamble—"We the people of the United States," "in order to establish justice," "promote the general welfare, and secure the blessings of liberty, do ordain." On the contrary, when the leading states of India resigned their rights in matters of external policy, they reserved their control over their domestic concerns; and the British Company gave to many of them a solemn undertaking, "that no officers of the Honourable Company shall ever interfere in the internal affairs of the Maharaja's Government." It is true that much has happened since the Treaty of Burhanpur with Sindhia, dated the 27th of February 1804, conveyed the definite assurance just quoted. But the treaties of the Company have received a double guarantee from the Queen's Proclamation, dated the 1st of November 1858, and from Parliament, which in its Statute 21 and 22 Vic. cap. cvi. section 67, declared that "all treaties made by the said Company shall be binding on Her Majesty." The question, therefore, is not merely one of vital concern to the states: it touches the honour and good faith of the British Nation and of its Sovereign. At first sight, it would seem to be impossible to justify the heading given to this chapter, or to extricate the supreme Government from the pledges which the Company gave and the Crown has accepted; and yet it is evident from the public records of both Houses of Parliament that intervention is exercised in the

internal affairs of the protected princes, and is approved by the House of Commons, and by His Majesty's Government. "Of the right of the Government of India to interfere after the forcible dispossession of the Maharaja there can be no question. It is admittedly the right and duty of the Government to settle successions in the protected states of India generally." "So far as the policy of your Government is concerned, I am glad that Her Majesty's Government have been able to afford it their full support." Such was the reply given by Her Majesty's Principal Secretary of State for India, on the 24th July 1891, as shown in the Manipur papers published by order of the House of Commons in August 1891. And other Secretaries of State have cast their nets over a wider sea of interference. So much so, that some writers have refused to put any limit upon the power and right of the British Government to intervene in the interests of the Empire. The late Sir George Campbell, in his *History of Modern India*, wrote in 1852: "It is impossible to give any definite explanation of what things we do meddle with, and what we do not." It must be confessed that if the difficult question raised in this chapter rested in that uncertain light the pledges of Parliament would afford but little security to the King's allies against constant and unwarranted encroachment. An attempt will therefore be made to extract from the material available to the public some principles of conduct in the dealings of the supreme power with the Indian states in respect of their internal administrations.

Categories of obligations or rights of interference.

§ 109. At the outset it is necessary to eliminate all instances of interference which can be referred to the two great and declared objects of the union that have been described in previous chapters on the

common defence and external relations. The intervention which has to be justified and assorted in the present chapter belongs to that category which concerns the general welfare. The occasions which give rise to it fall under two divisions, corresponding to the motives which primarily prompt the interference and create the obligation. The Government of India may interfere in the interests of a state protected by it or a sovereign recognised by it, or it may interfere mainly in the interests of British subjects and of the Empire as a whole.

An examination of the reports and correspondence laid before Parliament suggests the following six types of intervention, dictated by considerations of general welfare which mainly have in view the interests of the states. There is, first, the right to recognise successions to sovereignties and to regulate disputed successions. This right will be considered under its proper source, the prerogatives of the Crown, in the next chapter. There is secondly the right of interference to prevent dismemberment of a state; thirdly, to suppress rebellion against the lawful sovereign; fourthly, to prevent gross misrule; fifthly, to check inhuman practices, or offences against natural law or public morality; and sixthly, to secure religious toleration. The source and extent of the obligations correlated to these six rights will be considered, and it should be noticed that they are general obligations common to all the Native states, and therefore distinct from those special or limited rights of intervention which are peculiar to certain states, and which rest upon special treaty or usage. To an examination of the latter a separate section will be given.

There remains the second division of obligations, those which are enforced in the interests of the

British dominion. Two objections may be taken to this distinction. In the first place it may be argued that the interests of the British dominion and the interests of the Native states are identical. Any measure which benefits one of the two partners in the Indian Empire must benefit the other: their interests are in fact inseparable. This is true from a general point of view, and yet, when one partner is strong and the other weak, and moreover when it rests with the former to decide whether a case for interference has arisen, it is important to examine closely the ground for any demand made upon the latter. A protected state may be required to submit to dictation where its own vital interests are involved, and of such cases six instances have just been given. It may further be required to join hands with its protector in fighting a common enemy, equally dangerous to both, such as devastating plague or widespread famine. And lastly, even at some loss to itself, it may have to submit to the reasonable demands of a stronger neighbouring power which has vital interests of its own and duties to perform towards its own subjects. Although the British Government is a partner with the Native states in India, it is master of its own house in British India; and as such, it has interests of its own which it would be justified in securing by agreement or otherwise from its neighbours even if they were independent powers and not under its protection. Obligations of this sort are accepted by equal nations in their intercourse with each other, and they illustrate the grounds of interference with which our argument deals in this chapter. Examples of them are afforded by the measures taken to secure jurisdiction over British subjects, to protect the coinage of British India, to maintain an uniform

gauge in jurisdiction on railways, and to assist the proper working of the judicial system of British India in a country fissured by a variety of foreign jurisdictions. So much may be said in justification of the classification suggested. But another objection has still to be met. It may be argued that the proposed distinction even if it can be drawn to-day will not endure for long. For, supposing that, in the endeavour to guard the Native states from a flood of interference, it is possible to define and specify the cases in which British interests now require intervention in the affairs of the protected states, who can foresee what to-morrow will bring? The exigencies of the union and the requirements of British interests defy any limitations. Equal nations, which recognise no obligation to consult a superior before they enter into relations with other independent states, are forced by the circumstances of their inevitable intercourse with other nations to adapt their internal administration to the pressure of remonstrance. Considerable room for a similar discharge of obligations requiring concerted action, and for the maintenance of friendly relations, must be left in the Indian system, where nearly seven hundred states are united to a superior power. All this may readily be admitted, and yet it is hoped that an attempt to find a rule of conduct through all these difficulties may give confidence to the protected princes and check to some extent impatient reformers. For, if once the obligations of the states that arise from considerations of British interests can be subjected to the ordeal of definition and explanation, it is obvious that the protected sovereigns of India will be secured to a large extent against capricious or unjust interference.

Examination of the text of guarantees against interference.

§ 110. At the outset, the pledges against interference which have been given by the Indian Governments, and the interpretations put upon these engagements by those who gave them, require careful attention. It was natural that, when the policy of the ring-fence was in the ascendant, the Company should abjure all intention of interference. Their assurances were genuine, and they possessed neither the wish nor the means of interfering to improve an administration for which they were not responsible. If matters became so bad that their own interests were endangered by disorders beyond their borders, as in the case of the Pindari excesses, then the remedy was in their own hands, and it was used by them. Annexation expressed the dissolution of alliance or protectorate; and the Company did no violence to law or good faith when they proclaimed war on Coorg, or gave the king of Oudh notice that he must either conclude a fresh agreement or quit, as a consequence of the disruption of the ties of past treaties. But guarantees against intervention are not confined to the earliest period of Indian treaties. They find a place in the later engagements and agreements concluded both by the Company's servants and by the Viceroys who succeeded them. It becomes necessary, therefore, to see what construction the parties affected have put upon these solemn declarations of non-interference.

Lord Hastings gave the Maharaja of Jodhpur an engagement, dated the 6th of January 1818, that "the Maharaja and his heirs and successors shall remain absolute rulers of their country, and the jurisdiction of the British Government shall not be introduced into that principality." Notwithstanding the first part of this article, the British Government

interfered, in February 1824, to secure terms for the subordinate chiefs of Jodhpur who had been exiled by Maharaja Man Singh, and again, in 1839, to ensure good government. To Maharaja Holkar, in 1818, a pledge was given, that "no officer of the Honourable Company shall ever interfere in the internal affairs of the Maharaja's Government." Yet the Maharaja in 1835 himself invoked the intervention of the British against his mutinous subjects, and many years after that event the Marquis of Ripon effectively interfered to secure religious toleration for the Canadian missionaries. The treaty with Bhopal, dated the 26th of February 1818, declared that "the Nawab, his heirs and successors, shall remain absolute rulers of their country"; but when in 1863 the necessity arose, the ruler of that principality was informed that the article quoted by him excluded British courts of justice from Bhopal, but not the political jurisdiction over British subjects. This explanation was given when policies had changed, but it will be observed that it professed to be based upon the interpretation of the document given in 1818. And it must be admitted that phrases were in those days loosely written and more loosely understood. For example, the treaties with Kutch of the same period gave with one hand, and took away with the other what they had given. By their treaty with Kutch the Company engaged "to exercise no authority over the domestic concerns of the Rao," and declared that His Highness and his successors should "be absolute masters of their territory." The very next clause affirmed that "it is clearly understood that the views of the British Government are limited to the reform and organisation of the military establishment of the Kutch Government, to the

correction of any abuses which may operate oppressively on the inhabitants, and to the limitation of the general expenses of the state within its resources." The Company thus reserved an express right of interference; and by other articles they insisted on "friendly intercourse," the abolition of infanticide, the treatment of their agent "with proper respect," and the preservation of the rights of certain chiefs of the Bhayad. This treaty, therefore, contains within itself very material reservations to the absolute rule of the Rao which in another clause it seemed to affirm. As it was with the older principalities so also was it with those of new creation. In bestowing the principality of Satara in the same year, Lord Hastings, in September 1819, undertook that "the Raja shall ultimately have the entire management of the country," but the article ended with the clause: "He will, however, at all times attend, as above agreed, to the advice which the Political agent shall offer him for the good of the state, and for the maintenance of general tranquillity." When the state of Kashmir was created, the Maharaja was informed, by the Treaty of Amritsar, dated the 16th of March 1846, that he received it "in independent charge." Two years later the Governor-General informed the Maharaja, that "in no case will the British Government be the blind instrument of a ruler's injustice towards his people, and if, in spite of friendly warnings, the evil of which the British Government may have just cause to complain, be not corrected, a system of direct interference must be resorted to." Finally, when a Sanad was conferred on the Punjab states after the Mutiny, Patiala was assured on the 5th of May 1860 by the first Viceroy, that "the British Government will not receive any complaints

from any of the subjects of the Maharaja, whether Maafeedars, Jagirdars, relatives, dependants, servants, or other classes." Yet the same Viceroy had five weeks previously recorded a minute asserting the right of the British Government to step in whenever it was necessary to set right serious abuses.

The intentions of the British authorities as communicated to the states.

§ 111. It must then be admitted that the case against a right of interference by the supreme Government in the internal affairs of the Native states, as based exclusively on the text of their treaties, is somewhat weakened when other clauses of the same documents are looked at, when communications formally made to them are examined, and when the interpretation of the particular articles is tested by practice and by the corresponding articles of other treaties. There is, however, still more conclusive evidence of the intentions of one party to these contracts. No stauncher supporter of the doctrine of non-interference than Sir John Malcolm ever served the Company, and few officers have signed more treaties containing clauses against interference. He pleaded eloquently against a policy of "disturbing Native states with laws which they do not understand, and introducing principles of rule foreign to their usages," as dissolving "ties which, when preserved, further our objects. By tolerating for a period what we deem misrule, and by conciliating those who possess the hereditary attachment of tribes, we may render them instrumental in reforming their adherents." But there were limits to be set to the principle of unconcern which Sir John Malcolm had himself introduced into the Treaty of Mandasor with Holkar. "We must," he wrote, "alike avoid the minute and vexatious interference which lessens their power and utility, and that more baneful course

which, satisfied with their fulfilling the general conditions of their alliance, gives a blind support to their authority, however ruinous its measures to the prosperity of the country and the happiness of its inhabitants." Lord Canning's confidence in a policy of maintaining the rights and privileges of the Native states adds peculiar force to his views on the subject of interference. In his Minute dated the 30th of April 1860 on the grant of adoption Sanads, the Viceroy wrote: "The proposed measure will not debar the Government of India from stepping in to set right such serious abuses in a Native Government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a Native state when there shall be sufficient reason to do so. This has long been our practice." It seems, then, that whatever single expressions and clauses may be extracted from Indian treaties in favour of the absolute right of the protected sovereigns to govern as they please, the treaties themselves, and the parties who signed or ratified them, have persistently upheld the view, that under certain well-understood but undefined conditions the British Government has a right of interference, or, in other words, that the sovereigns in alliance with the King are under obligations to the paramount power to order and arrange their internal concerns so as to render such intervention unnecessary. What those obligations are which are common to all states, and which are suggested by a consideration for the welfare of the sovereigns and their subjects, we are now in a position to inquire.

§ 112. Family jealousies equally with family affection have proved a potent influence in the dismemberment of Indian sovereignties. The short-lived

Right of intervention to prevent the injury or dismemberment of a state.

Talpur dynasty afforded an instance of the disintegration of authority due to family disputes which would have reduced Sind to the condition of Kathiawar if an abrupt termination had not been put to their rule. The last Kalora Governor of Sind was expelled by Mir Fateh Ali Khan in 1786; and when the Province was annexed in 1843, not only was it already broken up by division into three principalities, but its central division of Hyderabad, or lower Sind, was shared with Fateh Ali's son by four sovereigns descended from his brothers. The burden of this dismemberment, due to family jealousies, fell after the annexation upon the revenues of India, from which pensions were bestowed on the families of the deposed Mirs. On the other hand, the Treaty Jagir of Kurundwar, in the Southern Maratha country, was suffered by the Company to be dismembered in 1855 as a concession to sentiments of family affection. To Raghunath Rao Keshav the eldest son of the chief, was given one share of the state, with all the rights of sovereignty that attached to the possession of the Jagir or Sarinjam as guaranteed by treaty. He was also entrusted with the management of the Inams. To the deceased chief's grandson, Ganpat Rao, and to his younger surviving sons Vinayak Rao, and Trimbak Rao, were given their shares, and the status only of British Sardars or nobles of the British province of the Deccan. It was intended at first to bring the estates of the junior branches of the family under British dominion, but this intention was eventually abandoned. They were permitted to arrange for the exercise of civil and criminal jurisdiction under the authority of the British Government. The distinction, however, between their status and that of the elder branch

was marked by the grant to the latter of a Sanad of adoption, a privilege only conferred on chiefs governing their own territories. In 1864 the younger branch of the Kurundwar family were finally assured that any request on their part to be allowed to adopt would be carefully considered by Government, but the guarantee of a Sanad was again refused to them. The political divisions of Kathiawar and Mahi Kanta are encumbered with disintegrated states, which have fallen from the position of sovereignties into Thana circles, as explained in a previous chapter, entirely in consequence of the partition of the public estates among the children of the chiefs. There are a few families in India, like the Kathis, who still follow the rule of equal inheritance, and nothing can prevent the ultimate dissolution of their sovereign rights except an alteration of the rule. In recent years the anxious care of the protecting power to prevent such a catastrophe has induced it to introduce the system of primogeniture into Jasdan the premier Kathi state, but in others the mischief of subdivision has gone too far, and the process has not been arrested by interfering with local customs of succession. With these few exceptions, however, the British Government has repeatedly stepped in with authority to save the Native states from the evil consequences of dismemberment. Accordingly, no ruling chief is permitted to bequeath his sovereignty, or any part of it, as he pleases; nor is he permitted to encumber his state with injurious legacies. In the case of Jagirdars and Talukdars, their interest in their states has been declared to extend only to their lives; and where certain chiefs of Kathiawar have on their death-beds provided for their widows, or their sons, by the assignment of lands, the British Government

has frequently intervened in the interests of the sovereignty to set aside the provision.

This intervention is justified by law as well as by public policy. The preservation of the internal sovereignty of small states, with their attributes of jurisdiction, is incompatible with a minute subdivision of authority and means. As in the case of succession to the rulership, so in the case of partition of estates, the Hindu law recognises an essential distinction between public and private property. A tribal custom of partition has no necessary application to a species of property to which a religious or a public character attaches. Although, by Hindu law, family property, even immovable, has long since become alienable, religious property, such as the endowment of temples, tanks, and caravanseries, has retained its inalienable character down to the present day. It may be pledged or encumbered for the necessary purposes of the institution it supports, but its *corpus* cannot be parted with. Except to the limited extent indicated, it is placed by Hindu law *extra commercium*. So, too, the Hindu Shastras assign to the land tax, which is the mainstay of the public fiscal system, and to the demesne lands of the Crown, a quasi-sacred attribute, as dedicated to the perpetual maintenance of the realm and of the king. Prescription cannot transfer the property of the king. He is a hallowed person, and as Colebrook points out in chapter iv. book ii. text 15 of his *Digest*, the succession to his kingdom is governed by a set of rules, that differ from those affecting the devolution of private property and arise out of the special nature of the royal estate as indivisible and inalienable. The estate is sufficiently burdened with the perpetual obligation to provide for the series of sovereign duties and functions, just as

the religious endowment must provide for the religious services or charitable offices to which it is devoted. This rule of Hindu law is not peculiar to that system. The Charter of the Abbey of Holyrood, dated about the year 1143, shows with what precautions the alienation of Crown Lands was surrounded in Scotland. It runs thus: "I David by the Grace of God King of the Scots with my Royal authority, with the consent of Henry my son and the Bishops of my kingdom, with the confirmation and attestation also of the Earls and Barons, the Clergy moreover and the people assenting, by divine guidance, grant, and confirm in peaceable possession, to the Church of the Holy Rood Edwinesburgh as follows." Five centuries later, when Charles I. was, on the 18th of June 1630, crowned at Holyrood, Dr. Spottiswoode, Archbishop of St. Andrews, Lord Primate of Scotland, *inter alia* interrogated His Majesty: "Sir, will you likewise promise to preserve, and keep inviolate, the privileges, rights, and revenues of the Crown of Scotland, and not to transfer and alienate them in any way?" To this the king replied: "I promise so to do." On grounds of public policy, the inalienability of the public estate and of the revenues of a Native state can, without difficulty, be supported. It has been shown that, when the Company allowed the petty state of Kurundwar to be divided, sovereignty was expressly and exclusively reserved to the senior chief. The younger chiefs exercise jurisdiction by sufferance or delegation from the British Government; and it is due to the principle noticed in Section 15 of this work, "Once a Native state, always a Native state," that the shares of the junior chiefs of Kurundwar retain even the semblance of Native sovereignties. But the division has been

effected at some sacrifice of administrative efficiency; and in other parts of the Bombay Presidency, where similar divisions have been allowed, the intervention of Government to provide for the jurisdiction and maintenance of public order has been necessarily carried to the full length of political administration, a step only short of annexation.

A few examples of the intervention of the British Government to prevent divisions of states may be taken from the Annual Reports on the moral and material progress of India presented to Parliament, or from the Collection of Treaties. The earliest instance of express check upon alienation is to be found in the Sanad given in 1820 to the Raja of Garhwal. In more recent times, the Chief of Ali Rajpur, dying in 1862, bequeathed his state in different shares to two sons. The will was set aside, and the succession of the elder son, Gangadhar, acknowledged. In 1884, the partition of the chiefship of Katosan, in the Mahi Kanta, was prevented, although in regard to private property it was the custom of the chief's tribe and of the Mukwana caste to distribute the patrimony on the death of the head of the family. On that occasion Her Majesty's Government expressed the opinion that the assignment of maintenance to a younger son of a chief was preferable to dividing the estate. In 1850 the Court of Directors refused to allow the partition of a state in Central India, and in 1848 they applied to all political Jagirs the rule, "that existing incumbents should be held incapable of charging their estates beyond their own lifetime." This order was repeated by Her Majesty's Government in July 1871 in the case of the state of Akalkot. Upon the more important state of Kolhapur a temporary restriction, in

regard even to alienations of land within the state, was imposed by article v. of the treaty of the 20th of October 1862. The Maharaja of Kashmir was precluded, by his treaty of 1846, from changing the limits of his territory without the concurrence of the British Government; and in the same year restrictions were imposed upon the Trans-Sutlej Chiefs. The Sanad, given to Suket on the 24th of October 1846, contains this clause: "The Raja shall not alienate any portion of the lands of the said territory without the knowledge and consent of the British Government, nor transfer it by way of mortgage." On the other hand, in one special case, to which reference has already been made in the fourth chapter of this treatise, Kotah was saved in 1838 from the dangers of civil war by the creation of a new state of Jhalawar at its expense. But even so, when the opportunity occurred in 1899 of restoring to Kotah part of the districts severed from it, that course was adopted. This partial departure from the rule of preserving a principality from dismemberment was the exception which proved the rule.

Extension of the principle to acquisitions of land.

§ 113. It may be mentioned here that some restrictions upon the acquisition of lands, as well as upon their alienation, are imposed upon the chiefs of India. In so far as such fresh lands are sought at the expense of other Native states they are governed by the principles already explained, since rulers of states cannot part with the public property. But where ruling chiefs seek to acquire property by purchase in British territory, the danger is apprehended that the chief by such acquisition will place himself under British jurisdiction, and so subject himself to complications which may prejudice his rights and privileges as a foreign sovereign. A leading chief in Central India

engaged in trade in Bombay with one Cowasjee Jehanghir, and in 1866 a writ of attachment against property belonging to his state was issued by the High Court in satisfaction of a decree obtained by a plaintiff who had sued him. The Maharaja appealed to the British Government to protect him, and the principle was laid down that the privileges enjoyed by His Highness, as a ruler of his state, could not accompany him when he deserted that position and assumed the character of a trader in British India. Chiefs who desire to acquire property in British territories are therefore required to seek the advice of Government before they purchase it; and they are given to understand that, in their capacity as possessors of such property, they must expect to be treated by public officers just as any other British proprietors or subjects.

Limitations on the power of Chiefs to bequeath estates.

§ 114. The restrictions attached to the dismemberment of states, or to the encumbrance of Jagirs and certain other estates beyond the lifetime of their holders, are carried still farther where an excessive provision is made for the families of a deceased ruler which must be injurious to the interests of his successor. In numerous cases the assignment of villages to widows has been commuted after a chief's death, with the sanction of the British Government, to an allowance in money. More difficult questions are raised by the assignment to younger sons of Giras or hereditary landed property, subject only to conditions of military service and tribute. Cases are not wanting where a chief, conscious of his inability to bequeath his whole estate to, or dismember it in favour of, a particular son, has attempted to evade the spirit of the rule by either giving on his deathbed, or leaving after his death, large estates to his younger son or

sons. The practice called for interference in more than one state in Kathiawar, where the system led in some cases not only to a material alienation of revenue from the chiefs who had to bear the burden of administration, but to constant feuds between the ruler and the cadets, or Bhayad, of former rulers. The state of Chuda thus dwindled down into a sovereignty of fourteen villages with its stem less than its branches, and with its chief left without the means of supporting his position. More than 2000 square miles, in the Province of Kathiawar alone, have fallen under British political administration from similar causes. The disintegration of Native states not only leads to the breaking down of the political system, but entails an increasing cost of supervision and control upon the British Government. It is therefore an evil which to some extent concerns the British taxpayer no less than the Native state. If the policy of administering the political agencies through their chiefs is to be maintained, it is necessary to keep the states compact and capable of supporting the cost of their administration. Adequate maintenance for the sons of chiefs can be provided from the public treasury without recourse to permanent alienations of villages and the consequent jurisdictional friction. Accordingly, the British Government, whilst it has not yet formulated any universal rule on the subject of providing for younger sons by grants of land, has at times interfered in the internal administration of its allies to rectify abuses and to prevent serious injury to the rights of the ruling chief.

Right of intervention to suppress rebellion.

§ 115. The second right of interference to which attention must be called in this chapter—for the subject of regulating successions to principalities falls properly under the heading of the Royal Prerogative—

arises in the event of rebellion against the authority of the recognised sovereign. So long as the doctrine of non-intervention and subordinate isolation was rigidly enforced, the Company interfered, or not, according to its conception of its own interests. It refused the invitation of the Bikanir Maharaja to reduce his nobles in 1830. Again, Hari Rao Holkar, in 1835, was denied assistance, because his own internal administration, with which the Government had "no concern," was the cause of the disturbance. The Company, in those days, preferred to wait and see whether disorder was incurable, and if so, they were ready with annexation. But with the more liberal measure of protection now accorded a larger right of intervention has been created. This inevitable right has been publicly asserted in the correspondence published in the *Gazette of India*, dated the 22nd of August 1891. At the same time the British Government will not lightly interfere where the rebellion can be suppressed by the responsible local authorities. Thus, in 1875, a set of Hindu devotees, called Sidhs, determined to coerce the Bikanir State by committing suicide by self-burial. The Indian Government decided not to interfere so long as the Native state could deal with the case. If the chief felt incapable of performing that duty and renewed his request for aid, and if public disturbances were threatened, and the incapacity of the state to suppress them was demonstrated, then interference would be regarded as a duty.

It is now a generally accepted principle that if the protecting power steps in it must do so on its own terms. The first condition annexed to interference for the maintenance of order is the request of the state for aid, supported by proof of the need for

such intervention; or, where there is evidence that the Native state cannot deal with the disorder, the British Government will interfere of its own motion. The second condition is hardly less important. In the case just quoted, the Political agent was directed to inquire into the grievances of the Sidhs, and if he found them to be substantial, he was instructed to annex to the grant of aid for restoring order a condition that the Darbar would be advised to redress any legitimate grievances. Thus a second condition is annexed to interference, namely, that the British arbitration or aid, when once invoked or granted, must be accepted by the ruling chief without condition or limitation. When, in 1870, civil war was expected in Alwar between the Maharao and His Highness's Thakores, the Maharao was called upon to submit in writing his acceptance of arbitration, and an undertaking to abide by the result without any condition or reservation. A direct guarantee from the British Government to his subjects was, by this means, avoided, and the authority of their ruler was upheld, since the concessions ultimately and ostensibly proceeded from him. These principles are further illustrated by the correspondence laid before Parliament in 1890 in connexion with disturbances in Cambay. On the 17th of September 1890 the Government of Bombay learnt that His Highness the Nawab had been driven from his state by a mob, who resented the oppressive administration of his minister Shamrao Narain Laud. The Nawab was at the very outset informed that his application for military assistance would be granted on the condition that "such intervention must be accepted unconditionally by the Darbar." British troops were then despatched to Cambay; and although repeated orders were

addressed to the malcontents to disperse, and an assurance of a full investigation after their dispersal was conveyed to them, they preferred to resist the police aided by the military force. They were consequently dispersed, not without some unavoidable loss of life; and after due inquiry certain reforms were suggested to the Nawab, which he was required to carry out. To assist him, and at the same time to uphold his authority, a special Agent was placed at his disposal for a fixed period; and His Highness was requested to delegate to the Agent full powers over the administration. The letter addressed to the Nawab, on the 9th of October 1890, by Lord Harris, Governor of Bombay, contained this intimation: "The British Government has scrupulously fulfilled its obligations for the maintenance of your rights, and has accorded you its protection in times of disturbance; but it cannot consent to incur the reproach of enforcing submission to an authority which is only used as an instrument of oppression." "In pursuance then of the express condition on which my Government undertook to intervene, and of the general principles to which I have called attention, I have directed Major Kennedy to proceed to Cambay in the capacity of Special Political officer." "Your Highness will be required to invest him with all the jurisdiction and authority necessary for the performance of the duties entrusted to him." Several instances have occurred in other parts of India which have established the principle that, in the event of rebellion against the authority of a Native sovereign, the British Government will interfere when the local authority has failed, or is unable, to restore order, provided that its intervention is accepted as authoritative, or final. Should it appear that the rebellion

is justified by good cause, the measures taken will be as gentle as may be consistent with the re-establishment of order, whilst the necessary reforms will be introduced, even if they involve the deposition of the chief.

Right of intervention to check gross misrule.

§ 116. The right of intervention is not confined to the case of open rebellion or public disturbance. The subjects of the Native states are sometimes ready to endure gross oppression without calling attention to the fact by recourse to such violent measures. Where there is gross misrule, the right, or the duty, of interference arises, notwithstanding any pledges of unconcern or "absolute rule" which treaties may contain. It is obvious that if the annexation of Oudh was justified, as the "only means of removing the reproach" to which the British Government was exposed by supporting with its arms and protection a system of tyranny, the milder interference involved in deposition or temporary administration may properly be applied. There is no obligation, wrote Lord Hardinge on the 7th of January 1848 to the Maharaja of Kashmir, on the part of the British Government "to force the people to submit to a ruler who has deprived himself of their allegiance by his misconduct." To the late Gaikwar of Baroda Lord Northbrook wrote, on the 25th of July 1875, in these terms: "Misrule on the part of a Government which is upheld by the British power, is misrule in the responsibility for which the British Government becomes in a measure involved." Any tendency that may be shown by some sections of the Indian populations to exaggerate grievances and appeal against their own Government, makes it necessary to lay stress on the condition that the misrule which justifies interference must be gross. Sir John

Malcolm, in 1830, excluded from the right of intervention to secure reform, "that right, which has often been assumed, with regard to our view of the comparative benefit that the inhabitants would enjoy under our rule from that which they enjoy under that of their own Native princes." The published correspondence of the Government of India bears abundant testimony to their watchfulness against the advocates of a policy of benevolent coercion at the expense of the recognised rights of the states. Their intervention, when called for and granted in consequence of misrule, has only been accorded where the circumstances were exceptionally grave, and misgovernment both long continued and gross. In most instances repeated warnings have been given, and in some cases, as in Baroda and Oudh, a definite period for amendment was first allowed before the ruler's authority was set aside.

Right of intervention to suppress inhuman practices.

§ 117. Indian treaties bear unmistakable and painful evidence of the dark side of human nature. It was not only in the earliest period of intercourse with the Company that solemn engagements were taken from the Native sovereigns with a view to the suppression of crimes and practices which shock the sentiments of civilised humanity. In the course of the nineteenth century more than one chief was deposed by the British Government for the commission of barbarous acts, and several Sanads issued by Viceroys of India testified to the continued necessity for guarding against any relapse to inhuman practices condemned by British opinion, but condoned, if not commended, by some sections of Indian society. Thus, in 1819, His Highness the Rao, "at the particular instance of the Honourable Company, engages

to abolish the practice of infanticide, and to join heartily with the Company in abolishing the custom generally, through the Bhayads of Kutch." The engagement had, however, to be renewed in 1840 by the chiefs, and there is reason to fear that this inveterate and unnatural practice has not yet been entirely suppressed. On the 4th of December 1829, Lord William Bentinck, in the teeth of strong opposition from native society and warnings from the highest officials, passed a Regulation which punished suttee, or the burning of widows on the funeral pyres of their deceased husbands, as culpable homicide. But for some years the practice, condemned by the law of British India, survived under the shelter of the Native states. In one of the Trans-Sutlej states, Mandi, twelve women were burned on the pyre of the Hindu Raja. On the death of Karan Singh, Chief of Ahmednagar, in the Mahi Kanta Agency of Bombay, his widow was burned alive against her will in 1835, notwithstanding the attempts of the British officers to prevent it. In 1836 his son bound himself by treaty—"From this time forward neither I, nor my children, nor my posterity, will perform the ceremony of suttee." But it was not until the close of the administration of Lord Hardinge that effective measures were taken to put down this blot upon British influence in the protectorate. That the British Government would not now tolerate any reversion to the practice may be accepted as certain.

Infanticide and suttee were not the only social customs on which the British Government waged war. On the north of the Brahmaputra, in the Province of Assam, the Raja Purandhar Singh agreed, on the 2nd of March 1833, to "bind himself, in the administration of justice, to abstain from the practices of the

former Rajahs of Assam, as to cutting off ears and noses, extracting eyes, or otherwise mutilating and torturing, and that he will not inflict cruel punishment for slight faults." The efforts of Sir Henry Lawrence in the cause of humanity are a matter of history, and an extract from a treaty, which he negotiated with the Udaipur state in 1854, illustrates the obligation under present consideration, although the particular treaty was afterwards annulled. Article xix. of the instrument ran thus: "No person to be seized on the plea of sorcery, witchcraft, or incantations." Passing on to the third period of Indian treaties, we find Lord Canning imposing the following obligation on the Cis-Sutlej states. On the 5th of May 1860 the Maharaja of Patiala, the Raja of Nabha, and the Raja of Jind, engaged "to prohibit suttee, slavery, and female infanticide throughout their territories, and to punish with the utmost rigour those who are found guilty of any of them." Unfortunately the need for constant watchfulness has not passed by. A casual examination of the published Reports of the Indian Governments supplies a list of half a dozen cases in which the Indian Government has interfered since 1868 to punish the rulers of Native states for cruel acts. There is no occasion to revive the shame of such incidents by republication of the names of the states, which will readily be found in Blue-Books, but it is noticeable that in each case the British Government took action, although the particular state had no special agreement with the British authorities to prohibit the practice condemned. The supreme Government justified its intervention by the law of public morality, and not by any express convention. A recital of the offences which provoked its departure from the rule of non-interference in the

internal affairs of the sovereign states will sufficiently explain its action. One chief ordered a subject, convicted of theft, to suffer the penalty of having his hand and foot chopped off. The second directed the mutilation of a slave by cutting off his nose and ears. A third had two jailers flogged to death. A fourth committed an outrage of too shocking and disgusting a character to bear repetition. The fifth ordered a "barbarous and inhuman" sentence of impalement to be carried out; and the sixth, so lately as in 1890, publicly tortured a subject. These instances tell their own tale, and explain why it is incumbent on the British Government, which upholds the Native states, to reserve to itself a right of interference to check or punish inhuman practices.

Right of intervention to secure religious toleration.

§ 118. The obligation to secure religious toleration is accepted not solely in consequence of the solidarity of religious feelings throughout the Empire, but also in the interests of the states themselves. When it is borne in mind that the British Government owes it to its own subjects to secure for them religious tolerance from Foreign potentates, its duty in India is enhanced by the subordinate relations which subsist between the Government of India and its protected allies. Thus, with China, liberty of conscience is secured by treaty; and the engagement with Siam, dated the 18th of April 1855, contains this provision: "All British subjects visiting or residing in Siam shall be allowed the free exercise of the Christian religion, and liberty to build Churches in such localities as shall be consented to." The Treaty of friendship and commerce with Zanzibar, dated the 30th of April 1886, contains article 23, which runs thus: "Subjects of the two High contracting parties shall, within the dominions of each other, enjoy freedom of conscience

and religious toleration. The free and public exercise of all forms of religion," and "the right to organise religious missions of all creeds, shall not be restricted or interfered with in any way." But the duty which the British Government has assumed is not confined to what it owes to its own subjects in Native states. Interference is justified, if the need arises, to secure religious toleration for the subjects of the protected states. Thus, in Gondal, bitter disputes at Dhoraji were composed by securing to the Muhammadan population the right, under certain safeguards, of eating their customary food. The Jodhpur Chief undertook, on the 24th of September 1839, to exercise "no interference in regard to the six sects of religionists." In 1871, when the Chief of Rajgarh embraced the faith of Islam, an announcement was made in public Darbar that the British Government did not look to the religious professions of the chiefs of India, but to their obligations to the paramount power. If they observed their engagements, "and ruled without oppression and intolerance, there would be no interference." The duty of religious tolerance was thus publicly asserted, and when the Maharaja of Indore claimed a right to enforce certain regulations against the Canadian missionaries, Lord Ripon informed His Highness that he could not permit them to be interfered with "in the exercise of personal and religious freedom in their own houses and on their own premises." It is true that in this case the missionaries were British subjects, but the immunity against persecution was claimed not only for themselves but for their converts and dependants. There are still a few Hindu principalities in which the civil status of Hindus embracing another religion is regulated by the ancient Laws of Menu, and a change of faith is held by their

Courts of Law to deprive such converts of their rights as citizens or as parents. The law of India is expressed in Act xxi. of 1850, and the British Government is constantly urging the rulers of such states to legislate for their own subjects in the same spirit of religious toleration. Until they do so, it is obvious that the paramount power must protect, if need be, its own subjects resident in or visiting such states from the operation of local laws so clearly opposed to their rights as subjects of the King.

Other rights of interference are in special cases secured by Treaty.

§ 119. The five instances which have been given of the right assumed by the supreme Government of interference in the internal administration of the united states possess two common features. The obligations discussed affect all the states of the Empire, and they are justified, even in the absence of treaty, by a desire for the permanency of Native rule. There are other obligations peculiar to certain states which have been created by express agreement and which operate exclusively in the territories to which they expressly apply. There is no reason to fear that they will be unduly extended to other states, and a brief notice of their character will suffice. The numerous sovereignties in Kathiawar engaged in 1807 "not to seize upon the lands of another," "neither will I purchase, at the offer of my brethren, their villages or lands." For the protection of the Bhayad and Mulgirassias, a Court called the Rajasthanik Sabha was accordingly constituted under the presidency of a British officer, whose proceedings were "subject to the general control of the paramount power, exercised through the Political agent in Kathiawar." When this special Court had decided a large number of cases and established a body of leading principles for the future guidance of the courts of the

Native states, it was withdrawn in the hopes that thereafter the states concerned would judge righteously between the parties. In the large state of Kutch, the British Government extended, in 1819, its guarantee to the Jareja chiefs of the Bhayad, and generally to all Rajput chiefs in Kutch and Wagar. Apart, then, from the general obligation of the Rao, His Highness is required to give effect to this engagement by the constitution of a special Court for the trial of certain cases that affect the guarantee-holders. In Central India the guaranteed chiefs and Tankhadars are protected by special rules from the jurisdiction of their feudal superiors; whilst in Kolhapur the subordinate Jagirdars are placed under British supervision, notwithstanding "the seignorial rights of" their Raja.

General rights of intervention to enforce British interests: *e.g.* i. Trial of Europeans.

§ 120. These exceptional restrictions upon internal sovereignty go to establish the general rule of non-interference; and passing from the category of obligations which have their origin in a consideration for the welfare of the states, we can now proceed to examine those duties which the British Government renders to its own subjects, and which cannot be performed without some degree of intervention in the affairs of other states. The subject of jurisdiction over Europeans and Americans, who owe allegiance to Foreign Nations, has been considered in connexion with the external relations of the Indian princes who have surrendered their rights of negotiation. British subjects, and especially those who are European or of European origin, are made subject to the Indian Legislature by Acts of Parliament. The right which a German or an American can expect his own Government to secure for him, of a fair and proper trial, cannot be denied to British subjects. Accord-

ingly, jurisdiction is exercised over them within the Native states by British officers. In the chapter on Jurisdictory arrangements this matter will be discussed at further length.

ii. In the matter of currency.

§ 121. Another British interest has given rise to intervention in the internal administration of the Native states. The regulation of coinage is one of the objects which the United States of America have entrusted to the Central Government. In India the full advantages of free trade and free intercourse are conceded to the Native states under British protection. There are no frontier stations, and no obstacles of customs examination are placed in the way of free circulation of passengers and goods, save where arms, opium, and a few special articles are concerned. These privileges carry with them some reasonable claims to co-operation. At the same time, the British Government does not appear to have asserted as yet any general right to establish uniform coinage or uniform weights and measures throughout the United Empire. The attempt was, indeed, made in Sind in 1842, where an article on the subject was introduced into the treaty presented to the Amirs. But generally and elsewhere the Government of India has contented itself with interference on behalf of the British taxpayer when circumstances have arisen in a protected state which have seriously threatened or injured public interests. Accordingly, when, in 1834, spurious and counterfeit coins were poured into the great trading centre of Bombay, the mint of Janjira, a state which lies on the other side of the harbour, was suppressed. No violence was done to the principles of international law by such intervention; and the Janjira state, if it had been a nation instead of a subordinate protected state, could not

with reason have complained. In order that it may avoid the recurrence of extreme measures of intervention, the British Government, which experienced at Agra a similar inconvenience from the mints of a neighbouring state, has laid down the rule, that Native state mints must be established and worked only at the capital of the state under proper control and supervision by the ruler of the state, whose coinage must be limited to the requirements of his own territories, and of those of his subordinate Chiefs. Where mints have fallen into disuse, they are not to be revived, and the state of Balasinore was, in 1885, informed accordingly. In some states, as in Porbandar, the British coinage has been introduced, and the tendency of the Government of India is illustrated by the 13th article of the Mysore instrument which makes the coins of the Government of India legal tender in that principality and declares that "all laws and rules for the time being applicable to coins current in British India, shall apply to coins current in the said territories. The separate coinage of the Mysore state, which has long been discontinued, shall not be revived."

iii. In the matter of railways, free trade, and judicial acts.

§ 122. The exercise of control over the railway system is not merely a measure of Imperial defence, but also one of common welfare. Every state in India is required to cede jurisdiction over that part of the common system which traverses its limits. The advantages of this concession will be discussed in a subsequent chapter. The union of the whole Empire has been consolidated in recent years by numerous engagements with the chiefs for the removal of injurious restrictions on trade. In the unreserved adoption of free trade the state of Kolhapur took a leading place in 1886, and other states, especially on

the Western side of India, have followed the example. But these reforms of the fiscal system are effected by agreement, and are not introduced by the assertion of Imperial authority except where the British Government acquired from the Peshwa special rights in the matter, or where the circumstances have called for exceptional intervention. Thus, in April 1857, the Company's Government laid down the principle in Gujarat that "a tributary state cannot raise at pleasure its transit duties, this being an Imperial prerogative," and in so doing they carried out the orders of the Court of Directors dated the 4th of January of that year. When, again, the British Government was compelled to intervene in Manipur in 1892, it abolished forced labour as an act of state. There are other directions in which the Imperial authority is occasionally pressed. Thus extradition is demanded in certain cases from Native states when a reciprocal surrender cannot be conceded. The recognition of the judicial acts of the Native states cannot be guaranteed or enforced against other states so long as their systems of administration remain as imperfect as they are. Yet, where the ends of justice require the attendance of parties before British Courts, the states united to the Indian Empire may be expected to render ready co-operation.

Cautions and reservations needed in reading this chapter.

§ 123. The obligations discussed in this chapter, so far as they are not expressed in written engagements, must be regarded as resting upon slippery ground. Allowance must be made for the great variety of states included in the protectorate, their geographical positions, and the course of British relations with each one of them. Each case for interference will admit of much difference of opinion. The full extent of British rights of intervention in

the Home Departments of the states has never been, and never can be, defined. The theory of it is well understood, but it has never been published. When one leaves the safe ground of military and international obligations, in respect of which the paramount power has received full authority to act, one enters on the debatable ground of policy and approaches "the mysteries." If Sir George Campbell was too sweeping in his comment on the relations between the British Government and the protected states,—"It is impossible to give a definite explanation of what matters we do meddle with, and what we do not,"—there is some truth in the application of his words to the internal administration of the states. The admission has been frequently made in these pages that neither the Company nor the Crown accepted a distinct mandate to promote the public welfare of the states in subordinate union with the government of India. It has been shown that obligations are constantly liable to be reinforced by the action of Parliament, by the exercise of the Prerogative, and by the accretion of interpretation and usage. Who can measure their volume? In the chapter on the "Price of Union," it was suggested that the account could not be closed. Is it, then, worth while to attempt the solution of the insoluble, or the classification of obligations, and their differentiation from matters of comity? To this question the answer may be given that the preservation of some 680 Native states by a paramount power is an extraordinary achievement. The threads which unite them must be very delicate and liable to be broken, unless mutual confidence is established and the burden of their common responsibilities equitably distributed. Success must depend on the self-restraint and modera-

tion of the protecting power, as well as on the loyal co-operation and submission of the protected states. From this point of view there is an advantage to be gained by sorting the whole bundle of obligations, distinguishing between those which the Indian princes must clearly perform, and those other services which they may at their discretion withhold or render to the Empire. On its part the British Government loses no opportunity of taking the public into its confidence, and when it interferes in the internal affairs of a state it usually publishes full reasons for the policy which it pursues. From such publications the material for this chapter has been taken; and since it is certain that the political barometer will rise and fall in the future as it has in the past, and that time and public opinion will make fresh calls upon the King's allies, it seems expedient to search history for an explanation of the principles which have hitherto guided the government of India in this part of its difficult task. By such means a continuity of policy may be maintained, and impatient reformers may be led to appreciate the difficulties as well as the advantages of the changes which they may advocate.

As regards the rulers of the states, they must remember that they cannot be of the Empire and yet not of it. They cannot enjoy the privileges and ignore the responsibilities of the union. As members of a single political organism, they owe allegiance to the union and must shoulder their share of the common burden. They will save themselves from interference if they recognise their obligations for the preservation of their sovereignties against dismemberment, and for the promotion of good government and religious toleration, which the King's Government has undertaken. There are other interests to be con-

sidered besides those of the states and their subjects. The British Government has a strong and indefinable obligation to promote the moral and material welfare of 232 millions of British subjects. If the action of a foreign nation towards them were unfriendly, law and policy would justify reprisals. With nearly seven hundred subordinate states, large and small, admitted into junior partnership with it, the British Government must guide its policy in each case that arises by the "competition of opposite analogies." It can hardly be contended that the refusal of a minority of the states to join in common action for the welfare of the Empire, whether it be a matter of currency, of postal development, of railway extension, or any other Imperial concern, would justify general inaction. The rights and privileges of each protected state are guaranteed by Parliament, but the beneficent exercise of the suzerain's authority, if it could not proceed without the agreement of every unit of the protectorate, would be paralysed. Care must be taken that a policy of benevolent coercion does not prove more dangerous to the integrity of the Indian sovereignties than was the policy of escheat or annexation. But at the same time the progressive wants of society impose new responsibilities on those who are charged with their administration. Under these conditions it is well for all parties to take stock of their rights and duties. An examination of treaties and of published correspondence on cases of interference is essential for that purpose; and the object of this chapter is not to lay down a law, but to suggest some lines of distinction, and to indicate facts and analogies upon which others may put their own interpretation.

CHAPTER XI

OBLIGATIONS DERIVED FROM THE ROYAL PREROGATIVE

Obligations which flow direct from the Crown.

§ 124. In every political constitution there are certain public acts which are incomplete without the formal exercise of the authority, or attributes, vested by it in its recognised Head or representative. The bestowal of favours, or the grant of powers, by the supreme Head of the community carries with it certain obligations. The Crown is the fountain of Honour, and those who accept its decorations or privileges owe, and admit their liability for, something in return. The Sovereign alone receives or accredits ministers and agents, and it needs no clause, such as article xix. of the Treaty with Kutch, dated the 13th of October 1819, to ensure that the British agent must "be treated with appropriate respect." The admission of a new chief into the family of sovereigns in subordinate alliance with His Majesty, however regular the succession may be, is not complete without the formal recognition of His Majesty's Viceroy; and the chief so recognised owes allegiance to the authority which recognises and upholds him. It was assuredly no accident that Lord Canning used in the Adoption Sanads issued by him a form and words which are quite unusual in Indian treaties. The Treaty of Benares, concluded on the 12th of December

1860 with Maharaja Sindhia, is drawn up between the British Government and His Highness, and Her Majesty's authority was not expressly referred to. But the Sanad of adoption, given to His Highness on the 11th of March 1862, set forth "Her Majesty's desire to perpetuate the Governments of the princes of India, and to continue the representation and dignity of their Houses." The royal prerogatives were touched upon, and to the assurance given "in fulfilment of" Her Majesty's desires, the express condition was annexed of "loyalty to the Crown," as well as faithfulness to obligations to "the British Government." There are, then, certain other obligations due by the Native states which have not been collected under the three heads of common defence, external relations, and common welfare, obligations which flow from the source of the British Crown and from the prerogatives of the King-Emperor of India. It may be argued that some of these duties were enforced even before Lord Canning, in his Despatch dated the 30th of April 1860, described the general position created by the transfer of the administration to the Crown in these terms:—"The last vestiges of the Royal House of Delhi, from which we had long been content to accept a vicarious authority, have been swept away. There is a reality in the suzerainty of the Sovereign of England which has never existed before, and which is not only felt but eagerly acknowledged by the Chiefs; a great convulsion has been followed by such a manifestation of our strength as India has never seen." No doubt the connexion between the Crown and the Indian Sovereigns became more intimate after 1858, but it existed before then. The Company simply derived from their Sovereign many of the rights which they asserted and exercised.

Hence it follows that some of the obligations which will be considered in this chapter were recognised when the Company ruled, although fresh vitality and force have been given to them by the determination of the Company's "trust" announced in Her Majesty's Proclamation of the 1st of November 1858.

Exclusive right to settle precedence and grant honours.

§ 125. The first of these obligations arises from the prerogative of the Crown to grant honours and decorations, and to settle precedence. From the fact that the King-Emperor of India exercises this power two obligations follow: first, that the Viceroy's decision as to relative rank is authoritative; and, secondly, that no honours can be received from other sources without His Majesty's sanction. It may be added that the power which confers can take away that which it has granted. Questions of precedence and relative rank seem trivial, but they have even led to war in the periods which preceded the establishment of the British peace. In the present day they give rise to heated discussion and sullen resentment, but more serious differences would ensue if the authority to arbitrate between rival claims did not vest in the Viceroy. A brief sketch of the history of British titles and salutes will suffice as an introduction to the consideration of the obligations attached to their enjoyment.

In India the Company's allies coveted honours and titles, bestowed by the Emperor of Delhi, long after the consolidation of British supremacy. In 1838 it was observed by a writer in the *British and Foreign Review*, that "the Nizam still acknowledges the supremacy of Delhi, as well as the King of Oudh, the Nawab of Bhopal, and the Nawab of Madras. Amir Khan does so in secret, we believe, although the Company raised him to the independent position

he holds." Considerations of policy induced the Governor-General to change the title of the "Nabob Vizier" of Oudh to that of "King." Lord Moira's Treaty of the 1st of May 1816 was concluded with "His Excellency the Nabob Vizier," whilst Lord Amherst's Treaty of the 17th of August 1825 was with "His Majesty the King of Oudh." Lord Moira, when he became Lord Hastings, was the first Governor-General who paid serious attention to the bestowal of titles, and he recorded his opinion that "this essential and peculiar attribute of sovereign rule should be exercised direct by the British Government." Lord Amherst granted several titles, and Lord William Bentinck reviewed the whole subject, in May 1829, in a Resolution in which he laid down three grounds for their award. The first qualification was service rendered in war or time of public emergency. The second was public spirit shown by landholders in assisting the police, or by others who had improved the commerce and agriculture of India, or by those who had carried out important public works. The third qualification was based upon liberality in making contributions for public purposes. But it was not until the communications of India were developed, and the institution of 1861 of the Most Exalted Order of the Star of India by the Queen, that the Emperor of Delhi's titles ceased to possess a value, and the favours of the Sovereign of Great Britain and Ireland were eagerly sought. The first Table of Salutes authorised by Her Majesty was contained in an Order in Council, dated the 20th of March 1857, although its issue in India was delayed by the outbreak of the Mutiny. The earliest lists published by authority were sanctioned by Orders of Council, dated the 23rd of January 1860 and the 1st of March

1864. They were revised in 1867, and several additions or alterations in them have since then received the specific sanction of the Queen. The Viceroy of India can only amend the Table of Salutes subject to the approval of His Majesty, and when in 1877 the title of Queen-Empress, or Kaiser-i-Hind, had been assumed by the Sovereign, a fresh list was published in the following year, which introduced the distinction of personal salutes given for life. Additions of guns, as a personal honour, to the dynastic salute of a chief last only for the life of the prince upon whom they are conferred. The salutes range from twenty-one guns, to which the three rulers of Baroda, Hyderabad, and Mysore are entitled, to nine guns, but those chiefs who receive salutes of eleven guns and upwards are alone entitled to the style of His Highness. Under the Company's administration certain ruling chiefs were styled His Excellency, but this style is now exclusively reserved for the Viceroy and certain other British officials. It is unnecessary to give a complete list of Indian titles with the additions made to them by Lord Dufferin, who was the first Viceroy to recognise learning by the creation of the titles of Mahamaho-padyaya and Shams-ul-Ulama. The fact that all honours, titles, salutes, and decorations proceed from the Sovereign entails certain consequent obligations which have next to be considered.

It was laid down in 1891 by Her Majesty's Government, that in all questions of social precedence amongst the chiefs of Native states in India, no absolute right can be claimed, and the decision of the Viceroy is authoritative. But long before then a dispute had arisen between the two great Rajput Houses of Jodhpur and Udaipur, otherwise known as Marwar

and Meywar, as to their relative precedence, and the Viceroy's decision had been enforced in 1870 as final. The deprivation, or the reduction, of a salute is regarded as a public disgrace, and Indian history supplies several instances of the infliction of this punishment on chiefs who have failed to carry out their solemn obligations. In the same way, titles have been publicly taken away from their holders, whether Native chiefs or British subjects, if they have brought disgrace on the Order into which they have been admitted. The obligation annexed to the receipt of the Royal favour is thus made clear. In August 1886, the *Gazette of India* published the announcement, that "Ram Singh of Bansi in the District of Basti is hereby deprived of his title of Raja." The Raja had sent for a girl betrothed to her relative; and when she was removed he ordered his servants to bring her by force. On her resistance she was cut down and her father was killed. The accused persons were acquitted for lack of evidence, but the Court pronounced an opinion against the Raja, who was accordingly deprived of his title. The Raja of Puri was, on another occasion, deprived of his title of Maharaja; and a member of the Carnatic family, who treated with disrespect a title conferred upon him, was only allowed to resume it after he had tendered his apology. The prerogative of the Crown is exclusive, and titles which suggest an allegiance to any sovereign but the King-Emperor are ignored. Thus the title of Vizier of Oudh was exchanged, as already mentioned, for King, and in 1864 the claim set up by Sultan Sikandar to the title of Shahzada was disallowed. Again, the sovereigns of India are never called in official language royalties, nor are their sons styled Princes, a term appropriated

both in Statutes and in Indian laws to ruling chiefs themselves.

Acceptance of foreign orders.

§ 126. Since the Sovereign grants honours, salutes, and titles, whether personal or official, it is also the prerogative of the Crown to settle the conditions under which they may be accepted from foreign Sovereigns. Regulations on the subject were published in the official *Gazettes of India* in 1886, and have since then been republished. Foreign powers can have no intercourse with the protected sovereigns of India, and this rule of isolation precludes the direct transmission of royal favours. Occasionally, Native chiefs have sought a privilege from another chief, or desired to confer a title on a British subject. In each case it has been held that the act was inadmissible as an invasion of the royal prerogative. Thus in April 1886, a chief in Central India desired to receive a gold chain Toda from the "famous house of Kolhapur." The request was courteously declined. Much must depend on the nature of the present sought or offered by a ruling chief. The annual gift of shawls by the Maharaja of Kashmir to the King, and the presents which the last King of Ava sent to China, signify more than an exchange of courtesies, being symbols of allegiance and subordination. It would therefore be contrary to the spirit of the union if Native chiefs gave or received such presents. In 1875, the Nizam of Hyderabad proposed to confer the title of Mustakil Jung Istikam-ud-Daula Bahadur on a British officer, but the title was not recognised. On the other hand Native sovereigns have conferred titles on their own subjects.

§ 127. More important, both in itself and in its consequences, is the principle that the succession of a chief to a Native state requires the recognition of the

King's representatives. From this principle follows the further right of the British Government to settle disputed successions. The first rule was clearly laid down in 1884 in a letter addressed, on the 15th of January, to the Chief Commissioner of the Central Provinces, which was published in the *Gazette of India* of the 22nd of August 1891. The Secretary to the Government of India wrote:—"The formal investiture of a chief should, if possible, be performed by a British officer. Such a course may not always be practicable; but I am to observe that the succession to a Native state is invalid, until it receives in some form the sanction of the British authorities. Consequently an *ad interim* and unauthorised ceremony, carried out by the people of a state, cannot be recognised, although the wishes of the ruling family and the leading persons in the state would naturally in all cases receive full consideration." The same principle had already been established under the rule of the Company, not, however, without some contradictory precedents, and it was certainly recognised by all subordinate states under the Mughal and the Maratha governments. Thus, the Nizam of Hyderabad, Sikandar Jah, in 1803 obtained the confirmation of the Emperor of Delhi to his succession to rule in the Deccan on the death of Nizam Ali. When it is recollected that Hyderabad had been admitted into the British alliance in 1766, that it was a party to the Triple alliance of 1790, and that in 1798 the British subsidiary force was made permanent and the union of the Nizam with the Company finally cemented, the reference to Delhi for recognition illustrates the firm hold which the idea of the Imperial prerogative of recognising successions had obtained in India. The Company was not altogether

The right to recognise all successions to chiefships.

pleased with the incident, but its officers judiciously retorted by delivering to the new Nizam an instrument, dated the 24th of August 1803, which declared that the British Government considered all treaties and engagements which had subsisted between the late Nizam and the Company to be in full force. Thus, in the first period of British intercourse, the prevalent idea in India was that successions needed the confirmation of higher authority; and the Governor-General, Lord Wellesley, accentuated the principle by delivering a formal instrument to the ruler of the leading state in the country.

In the next period the state of Indore presented an opportunity for enforcing the same lesson. Hari Rao Holkar died in October 1843, and His Highness's mother was allowed by the British Resident to choose his successor, who was thereon installed by that officer without awaiting instructions from Calcutta. To make the position clear, the Governor-General, on the 9th of November 1844, addressed the new Maharaja in language which has ever since been adopted on similar occasions. It was remarked that by the death of the late chief, without leaving an adopted son, or any one entitled to succeed, "the guddee of the Holkar state became vacant." Thereon "it became necessary for the Governor-General to make an arrangement for the administration" of Indore. The secondary position which, in forming a decision, was assigned to the wishes of the widows, was emphasised in the following sentence:—"Having an earnest desire to promote the interests of the chiefs and people of the state, and to preserve the honour and prosperity of the principality, the British Government determined on this occasion to make such an arrangement as would conduce to the accom-

plishment of these ends, and at the same time, it was believed, be agreeable to the feelings of the remaining members of the family of the late Hari Rao Holkar, and of the chiefs and nobles of the principality." Upon this foundation of motive and prerogative was based the following conclusion :—"Actuated by these motives, I was induced to direct the Resident to nominate your Highness to the occupation of the vacant guddee." "In thus bestowing on your Highness the principality of the Holkar state," it is the intention of Government that "the chiefship should descend to the heirs male of your Highness's body lawfully begotten, in due succession, from generation to generation." Few Indian documents possess more historical interest than that just mentioned. It exonerates Lord Dalhousie from the charge, so often brought against him, of discovering a new doctrine of lapse. It places Lord Canning's Sanads in their true light as granting a concession which no ruling chief, and still less the widow of a chief, could claim, namely, the privilege of regulating the succession where no heirs male of the chief's body lawfully begotten existed to constitute a "due succession." Finally, it gives the force of continuity to the language used by Her Majesty's Government in 1884 when the succession to Kolhapur was based on selection and not on any ceremony of adoption performed by the widow of the last Raja. On that occasion the Secretary of State expressed satisfaction that "a candidate has been found, closely related to the deceased prince, of a character which is stated to give promise of success as a ruler when he attains majority, and whose selection, whilst agreeable to the Ranis and people of Kolhapur, has met with the approval" of the Government of India.

From this account it may be gathered that the prerogative of recognising successions was exercised in the times of Mughal rule and was asserted by the Company in the first and second periods of their intercourse with the states. In the third period it was finally placed beyond any challenge by the action of the first Viceroy. Lord Canning's Sanads of adoption were eagerly sought, and, as has been seen, they were denied to the junior branch of the Kurundwar family because its representative was not recognised as a ruling chief. The ruling prince of almost every important state in India received a Sanad, and by his acceptance admitted, if there was any need for the admission of that which could not be contested, the right of Her Majesty to regulate successions. The Sanads were received with every mark of joy and gratitude, because they conferred something new and substantial when they granted to ruling chiefs a right of adoption "by yourself and future rulers of your state, of a successor in accordance with Hindu law and the customs of your race," or an assurance "that, on failure of natural heirs, any succession to the government of your state, which may be legitimate according to Muhammadan law, will be upheld." The present section may be concluded by repeating a quotation from a Despatch dated the 5th of June 1891, which was published with the correspondence on Manipur affairs. "It is the right and duty of the British Government to settle successions in subordinate Native states. Every succession must be recognised by the British Government, and no succession is valid until recognition has been given." There is no compromise or qualification in this public declaration of an obligation common to all states.

§ 128. From that broad rule it follows that the British Government has the right and the duty of intervention to settle disputed successions. One of the objects which Lord Canning had in view when he conferred the Sanads of adoption was that ruling chiefs should make timely provision for their successions. If they neglect the opportunity, and make no use of the means particularly placed in their hands, the British Government must *select* a successor. It cannot entrust the prerogative of the Crown to the widows of a chief. They may indeed adopt a son to the private estate, if there be any, of the deceased Hindu chief who has himself neglected, or been unable, to exercise the right. But the regulation of the succession to a chiefship is beyond their power. Thus, the last Rani of Satara adopted a son to her private estate, but the principality lapsed on the death of her husband without heirs. A chief may reasonably be expected to exercise the right of adoption in a formal and public manner. When, in 1869, it was announced that the late chief of Shahpura had adopted Ram Singh just before his death, it was discovered that the alleged adoption had been performed in secret, and there was no adequate proof of the fact that the chief himself had taken part in it. The obligation of selecting a successor thus devolved upon the British Government. The state of Ali Rajpur fell vacant, in 1891, upon the failure of heirs direct or adopted. The Government of India, following the precedent of Indore and of other states already noticed, declared that the state was thus liable to be treated as an escheat, but they selected Partab Singh, a cousin of the late Rana. In so doing they announced that they were "guided solely by a consideration of the best interests of the state and of the

The right to settle disputes as to succession.

generally-expressed wishes of its nobles and people. Rana Partab Singh succeeds to the chiefship in virtue of his selection by the Government of India, and not as a consequence of any relationship, natural or artificial, to the late Rana Vijay Singh." In weighing the best interests of a state due consideration is paid to Hindu or Muhammadan law or to any special family or tribal custom that supersedes the ordinary law. The personal fitness, or promise of fitness if a minor is selected, of the candidate is an essential qualification. Subsidiary to these main considerations, the wishes of the late ruler, if they can be ascertained, and the general feeling of the nobles and widows receive full attention. The widows of the deceased chief ought, in the absence of palace intrigue or domestic quarrels, to be the best exponents of their husband's intentions or preferences, and they can so far contribute to the material upon which the Viceroy's selection and decision will be taken. But a prompt settlement is essential to the welfare of the state, which would be ruined by delay, and by the growth of partisan feelings which a prolongation of the dispute would entail. It is unnecessary to dwell on these considerations which are familiar to every student of Indian history. The Manipur correspondence shows that importance is still attached to the principle just discussed. "It is admittedly," wrote Her Majesty's Secretary of State on the 24th of July 1891, "the right and duty of Government to settle successions in the protected states of India." Such questions may even arise out of the terms of the adoption Sanads, and not merely upon failure of heirs whether natural or adopted. In Nawanagar, a Kathiawar state, His Highness first adopted one son, on whose death the adoption of another, Ranjit

Singh, was in January 1879 recognised by the Viceroy. But in 1882 the Jam had a son, Jaswat Singh, born to him, and the Government of India consequently revoked their provisional recognition of Ranjit Singh. When, however, an early death removed this natural heir leaving no son to succeed him, the claims of Ranjit Singh as an adopted heir revived, and he was recognised as ruler of Nawanagar.

In other cases questions have arisen as to the meaning of the Sanads given to Muhammadan states, which qualify the succession "on failure of natural heirs" by the words "which may be legitimate according to Muhammadan law." Does the protective *caveat* "natural heirs" comprise collaterals? or may a Muhammadan ruler select any son he chooses to succeed him? It would seem that a Muhammadan chief who is without lineal heirs should not pass over a natural collateral heir in favour of a selected successor without rights of inheritance, nor pass over the person next in succession by selecting a more remote collateral. This much is established by authoritative decisions in several cases, that the strict rules of civil inheritance are not necessarily applicable to quasi-regal successions. But there is no occasion to exhaust the list of questions that may require settlement. It is sufficient to state the rule that if disputes arise either under the Sanads or outside them, the Viceroy, as representative of His Majesty, has the right to settle them. Were it not so the rival parties would have recourse to the sword.

Nazarana and succession duties.

§ 129. Indian treaties and histories contain frequent reference to Nazarana or succession duties, and a discussion of the subject of succession to Native states is incomplete without some allusion to them. Such fines or levies have their roots deep in the

past of Indian, as well as mediæval European, history. At one time the payment of Nazarana or succession fines was regarded as the best evidence of a title to succession, and rival claimants vied with each other in pressing their payment on the Peshwa or the Emperor. The duty was often excessive. Thus, the petty Bhil state of Mandavi had devolved, in 1771, upon a cousin of the last ruling chief, and the Peshwa charged a Nazarana of 100,000 rupees. Another succession occurred in 1776, and a further duty of 150,000 rupees was demanded. Ten years later the impoverished state was charged 60,000 rupees for a third succession. When the Treaty of Bassein placed Mandavi in tributary relations with the British Government, the country was reduced to such a state that, in 1814, on the succession of a collateral, no Nazarana was taken. Sir John Malcolm was an advocate of the expediency of establishing the system of Nazaranas on a fixed basis; but so long as the doctrine of escheat and lapse prevailed, the Company did not desire to commute a more profitable right of reversion for a tax with which was associated the idea that its payment afforded a guarantee against lapse. The Native states still levy Nazarana on succession to their subordinate chiefships, and the British Government has interfered in Kolhapur to prevent the exactions from oppressing unduly the chiefs who are placed under their general protection by treaties with the Maharaja. The liability of subordinate states to pay succession duties on the recognition of succession by the suzerain was so well established by precedents and tradition that exemption from the liability required special provision. Thus the treaty of 6th June 1819 with the Southern Maratha Country Jagirdars, the Patwardhan family, contains

a statement of their obligations to muster troops, and then promises that "when new Sanads are required for the descendants of each it is to be represented to the Government, which will graciously confer a new Sanad, and continue the Jagir without exacting any Nazar." The chiefs have since then received adoption Sanads, so that it may be assumed that no Nazarana would be charged on the succession either of descendants of the original grantee or of sons adopted by the ruling chiefs. Practically, under present policy, no succession duties are charged in the case of direct successions or adoptions duly made by ruling chiefs. In other cases of collateral successions, and where the state is not specially exempted for poverty or other good reason, a light duty is charged on its net revenue after deduction of any tribute which the state may have to pay under its treaties. The duty is graduated according to the distance of relationship, and if one succession on which duty has been paid is followed within a certain interval by another, a further reduction is made.

The right to receive or accredit agents.

§ 130. It is the prerogative of the Sovereign to receive representatives of, or to accredit his own to other Nations and states, and to annex to their recognition such conditions as are required. This, like other royal prerogatives, was exercised by the Company in former days. An extract from the records of the East India Company illustrates the procedure adopted. Thus, on the 2nd of August 1843, the following Despatch was sent to the Governor in Council at Bombay: "Sir—At the request of His Majesty the King of the French, which has been communicated to us through the Queen's Government, we have consented to the recognition of Mons. Jules Altaras as Vice-Consul

for France at Bombay. We are, your Loving Friends, John Cotton," and others. From the date when the Government of India passed to the Crown, the nominations of foreign Consuls to reside in India have been regulated by the rules which apply to other possessions of the Crown. Nominations of a foreign Consul are signified by the power concerned to the Foreign Office in London. If the Indian authorities have no objection to raise, the *exequatur* of His Majesty issues in the usual course. When a foreign Consul is invested by his own Government with authority to make Vice-Consular appointments, the Government of India can recognise such appointments. Foreign consular officers having none but commercial duties to perform are only appointed at British Indian ports, and they have no intercourse whatever with the Native states. The channel of communication between the ruling princes and the outside world for all official purposes is through the agents or Residents placed at their Courts by the Government of India. These representatives of the King's Government have various duties assigned to them by British law, as well as by treaty with the states, or in the absence of treaties by established usage. In the earliest days of political intercourse, when a few favoured states were admitted into the Company's alliance, arrangements were made for the mutual appointment of agents. But with the introduction of the extended policy of subordinate isolation, and with the surrender by the protected allies of their rights of war and of negotiation, the maintenance of the Company's agents at the Courts of the Indian sovereigns entered on a new phase. Some states, as Kolhapur, were required to pay the cost, or a part of the cost, of the agency establishment from which under the altered conditions

they received material services of protection and advice. In course of time Parliament and the Indian Legislature attached to the Political agents special jurisdiction over British subjects in foreign territory. The Governor-General in Council charged them with the exercise of other jurisdiction delegated to the Government of India by the Native sovereigns, as over railway lands or civil stations. These arrangements will be considered in the next chapter. Here it is only necessary to refer to these matters in order to indicate the extensive area of duties and functions imposed on the Political officers attached to the protected states. For the discharge of their duties they require not merely the privileges of extra-territoriality and the immunities that attach to foreign representatives and their servants in foreign territory, but also the active assistance of the sovereigns whose interests are protected by the British Government. No treaty engagement is needed to support this obligation. Without its representatives on the spot the Government of India could not perform its proper duties to the Native states. Occupying the position of international representative or of arbiter in interstatal disputes, charged with the defence of the Empire and the protection of the chiefs against causeless rebellion, called upon to decide on the spur of the moment questions of succession, and in rare cases required to take a more active part in the internal administration, the supreme Government must station its officers wherever the need arises for their presence or their intervention. Any attack upon them is rightly regarded as a breach of loyalty, and when the Gaikwar of Baroda was, in 1875, charged with an attempt to poison the British Resident, the proclamation issued by the Viceroy described the alleged attempt in these

terms: "Whereas such an attempt would be a high crime against Her Majesty the Queen, and a breach of the condition of loyalty to the Crown under which Mulhar Rao Gaikwar is recognised as ruler of the Baroda state." The duty which a Native prince owes to the British agent at his Court was thus traced to its source, the royal prerogative.

The right to take charge of the states of minors, and to provide for their education.

§ 131. To the same source may be attributed the right of the British Government to take charge of states when, owing to the death or removal of a ruler, a fresh succession has not been recognised, or the successor duly recognised is unable from minority or other cause to undertake the responsibilities of his high position. Similar in source and nature is the obligation repeatedly and publicly affirmed "to see that a minor chief is so educated as to befit him to manage his state." The civil law imposes a special obligation on Government for the protection of minors and for their education. The principle is of greater importance to the Indian sovereigns, where Zenana factions and Court intrigues tend, if unchecked, to produce complications that would seriously hamper a young chief in the discharge of the extensive powers which may devolve upon him, whenever he is entrusted with the administration of his state. In the discharge of its duties the Government of India, whilst anxious to pay all deference to the views of the family of the deceased chief, admits no right of intervention, and is exclusively guided in the arrangements which it makes by its own conception of the interests of the ruler and his subjects.

The duty of loyalty to the Crown.

§ 132. There are other obligations that flow from the direct relations in which His Majesty the King-Emperor stands to the protected chiefs of India, and

which are embraced in the condition of loyalty to the Crown attached to the Sanads of adoption. The criminal law of British India recognises the offence of "waging war upon the King"; and although the princes of India are not subject to the regular jurisdiction of the British Courts, they have been taught by many examples that resistance to the Royal authority constitutes an act of rebellion. The Nawab of Furruckabad rebelled in 1857, and surrendered himself in 1859 under the Proclamation of amnesty. He was tried, and found guilty of waging war against the British Government, and of the murder of British subjects. The sentence of death passed upon him was suspended, but he was banished from British India. Breach of allegiance is still recognised as a ground for annexation, and Lord Canning expressly guarded against the impression to which his Sanads might possibly give rise, by recording this reservation: "Neither will the assurance diminish our right to visit a state with the heaviest penalties, even to confiscation, in the event of disloyalty or flagrant breach of engagement." The obligation of loyalty rests not merely on the rulers of states, but on their subjects as well, since they, equally with their rulers, enjoy the protection of His Majesty. Thus, in August 1891, the Jubraj of Manipur was tried and convicted of "waging war against the Queen-Empress of India." The occasion was taken to proclaim that "the subjects of the Manipur state are enjoined to take warning by the punishments inflicted on the above-named persons guilty of rebellion and murder." Hostilities against the British Government not only involve a breach of allegiance, but a "crime." In the same way no Native state is justified in undertaking, or abetting hostilities against another state. When,

in 1873, the Maharaja of Rewa, under grave provocation, despatched a force to arrest Hardat Singh in Sohawal territory, his conduct was held to be a breach of allegiance. The duty of allegiance and loyalty owed by every state in India must be performed in spirit as well as in deed. The grant of harbour or refuge to a proclaimed offender differs little from abetment of his offence. In 1872, His Highness the Nawab of Junagarh brought to Bombay in his retinue a proclaimed mutineer named Niaz Muhammad Khan. This person was not covered by the amnesty, and he was seized, duly tried, and convicted of rebellion. The Nawab expressed regret, and pleaded ignorance of the antecedents of his follower. The apology was accepted not without a serious warning to the chief, and the principle was laid down that a protected chief is bound to communicate to the British agent the name and circumstances of any suspicious persons, of any creed or profession, who may seek a refuge in his territory.

CHAPTER XII

BRITISH JURISDICTION IN THE NATIVE STATES

Three classes of British jurisdiction, delegated, residuary, and substituted.

§ 133. How essential to the Indian system is the principle that sovereignty is divisible, becomes apparent when the intrusion of British Courts into the territories of the Native sovereigns is examined. In every state in the interior of India, the British Government exercises personal jurisdiction over British subjects, as well as extra-territorial jurisdiction over all persons and things within its cantonments situated in foreign territory. Where-ever a main line of railway penetrates, British jurisdiction acquired by cession and limited in extent to the objects set forth in the terms of cession follows it. In many of the protected states the Government of India shares with the sovereign his jurisdiction over his own subjects; and in some the entire administration of justice, both civil and criminal, is conducted under arrangements made by the executive Government, or, as it is termed, by the Courts of the Governor-General in Council. In the case of States which are subject to none of the disabilities under which the Indian states lie, International law tolerates and recognises some of these forms of extra-territorial jurisdiction. Although it was laid down, in the case of the *Laconia*, that as a matter of right no state

can claim jurisdiction of any kind within the territorial limits of another independent state, still a nation may, and does expressly consent, either by treaty or by its own legislation, to the introduction of foreign jurisdiction over persons who are not its subjects, or over areas occupied by the representatives of foreign powers, without thereby losing its independence. This authority derived from the sovereign of the place in which a court of foreign jurisdiction exists, coupled with the authority of the sovereign in whose name the court is established, constitutes the double foundation for the Consular jurisdiction which His Majesty's officers exercise by Orders in Council within Egypt, China, Morocco, Maskat, Turkey, Zanzibar, and other places. Its extent is more comprehensive than is generally imagined. The Orders which affect Turkey, for instance, deal with the following matters, namely, the Government of British subjects, the judicial system in Egypt, hospital dues, judicial fees, the suspension of the operation of Orders in Council as regards matters within the jurisdiction of the Egyptian Courts, fugitive offenders, and the administration of Cyprus. With the Chinese Empire His Majesty has arranged for the extension of Consular jurisdiction to maritime matters and additional ports, and for the establishment of the supreme Court at Hong-Kong, in addition to the matters mentioned under Turkey. But International law could not be strained to the length to which British jurisdiction is carried in India as, for example, in those states where the Political agent hears appeals from capital sentences passed by the Courts of the Native states upon their own subjects. In short, if the protected states are to be treated, as the Crown and Parliament have undertaken to treat them, not indeed as independent, but

still as sovereign states, we must part company with Austin and his school of International law, and hold fast to the principle laid down by the late Sir Henry Maine that sovereignty is divisible. The only alternative is that which has already been discarded in the tenth chapter of this treatise, namely, to agree with Sir George Campbell that "it is impossible to give any definite explanation of what things we do meddle with and what we do not." When it is remembered that in Africa the foreign jurisdiction of His Majesty is being exercised over any persons and in any cases over and in which territorial jurisdiction may be exercised, those who are anxious to perpetuate Native rule in India, and are jealous guardians of the rights and privileges of the protected princes, will be pardoned if they shrink from accepting the counsel of despair suggested by Sir George Campbell.

It is essential in dealing with the subjects discussed in this chapter to remember the point of view from which the obligations of the ruling princes are approached. An endeavour is being made to draw a line between what they must surrender as the price of union and what they can claim to retain. If the hand of foreign jurisdiction is to be extended according to "the circumstances of the case," and if analogies between European international usage and the treatment of the Native states are to be ruled out of court, the protected princes must lose a powerful defence against encroachment. Yet Parliament, the King's Orders in Council, and even recent treaties, constantly proclaim that the princes of India have "sovereign" rights, and while this is the case it becomes necessary to examine the intrusion of British jurisdiction into the Native states from their point of view as being sovereigns in their own internal affairs.

The best justification which can be given for the exercise of the extra-territorial powers of the Government of India will be found in tracing it to its sources. If these sources are very wide it will still be found that most of the area is outside the zone of danger, and some degree of confidence will be given to the protected princes by knowing where danger lurks and how it can be avoided. The preamble to the "Indian (Foreign Jurisdiction) Order in Council 1902" recites the following sources: "treaty, usage, sufferance, and other lawful means," and of these the first three sources supply most of the "powers and jurisdiction exercised on His Majesty's behalf by the Governor-General of India in Council." In this chapter it is proposed to adopt a classification of the jurisdiction thus exercised which will bring prominently into view the source of the particular jurisdiction exercised whether delegated, residuary, or substituted. Delegation is meant to convey the idea of consent expressed by agreement or resting on sufferance. Residuary is intended to carry the mind to the defects in the sovereignty of the protected rulers, who from a remote past have shared the attributes of internal sovereignty with a superior power exercising jurisdiction in certain defined and well-established cases. The phrase substituted is used for lack of a better term to describe the setting aside of the jurisdictory powers of a chief when such powers are neither delegated nor vested by usage in the paramount power, but taken out of the chief's hands and exercised for him by the will of a stronger power.

In the chapter on obligations for the common defence, it was shown that all the states of India have delegated to the paramount power the duty of defending them, and consequently they are obliged to grant to

the Imperial army the right of cantonment and an effective control over the railways, Imperial post offices, and Imperial roads. These concessions involve the exercise of British jurisdiction. In the chapter on external relations, it was explained that the sovereigns of India have ceded, without limitation or reserve, their rights of negotiation. It is therefore necessary to station British agents in their territories, and the representatives of the British Government are entitled to exercise jurisdiction within their Residencies and agencies. To prevent cause of complaint the subjects of European and American nations must receive proper justice, and it may become necessary to entrust their trial for offences committed in the states to a British Court. In special localities, the Native sovereigns have handed over to the British Government jurisdiction over civil stations within which jurisdiction is exclusively exercised by British Courts. In all these cases, the source of British jurisdiction is delegation, or the consent of the states, expressed by treaty in the case of the larger principalities, and elsewhere based on tacit consent and long usage. In every Native state the combined authority of the King and the authority of the protected sovereign, either expressed or implied, may be regarded as the source of that widely extended personal jurisdiction over European and Indian British subjects which the Government of India either exercises, or, under certain limitations, entrusts to the Native state. We may then classify as instances of *delegated* jurisdiction which do no violence to the accepted theories of sovereignty, the five following classes: cantonment jurisdiction, railway jurisdiction, jurisdiction over civil stations or canals, residency jurisdiction, and personal

jurisdiction over Europeans. In regard to the last of these types it might be objected that the King's jurisdiction and control over his own subjects do not depend on delegation, and that the Statute, 6-7 Will. iv. c. 78, which gave colour to such a view was repealed. The view has been held and avowed by the British Government that its officers exercising jurisdiction over British subjects are not delegates of the power ruling over the country where they exercise such jurisdiction, but officers of the crown. This may be admitted, but, nevertheless, the powers which these officers exercise are conceded to the Crown by the territorial sovereign, and the term delegated jurisdiction may be used to cover that concession or toleration which is extended to the foreign official appointed by his own Government, with the consent of the territorial sovereign, to hold his court in the territories of the latter.

The British Government also exercises a considerable jurisdiction in some of the Native states over the subjects, or a class of the subjects, of such states. Sometimes this power is reserved to the Indian Government by treaty, as in the case of Kutch over the Jareja nobles, or in the case of Kolhapur over the feudatory states. More frequently it rests upon long usage and restrictions of sovereignty which date back from the first contact of the Company with certain states. In the period of civil wars which preceded the establishment of the British peace a stronger chief frequently claimed and exercised a share in the sovereignty of a neighbouring territory, retaining in his own hands jurisdiction over certain persons or things. The British Government when it suppressed the superior chief, as, for instance, the Peshwa, relinquished his control or jurisdiction over the minor

chiefs whenever that course seemed possible. But where the states were too small or too poor to provide proper courts of law, the Company retained in its own hands certain attributes of sovereignty. Such jurisdiction may be described as *residuary*, by which term is implied that the residue of jurisdictory attributes which have not been left with the Native sovereigns are exercised for them by the British Government. It may be urged that this jurisdiction is also delegated, and in some cases such is no doubt the case. But, as a rule, it vests in the British Government by right and by treaty or conscious delegation, and, for reasons which will be more evident when the subject is discussed at further length, the term residuary will be found convenient. Residuary jurisdiction may be divided into ordinary and extraordinary. It is only with the former class that this chapter is concerned, because to the extraordinary power of the Government of India to interfere and set right any grievous wrong no limit can be fixed. The so-called extraordinary jurisdiction does not pretend to be based on right or delegation; it rests upon an act of state and defies jural analysis. In such cases the Government of India interferes with authority by virtue of its paramount powers, and it does not cloak its intervention, or weaken its authority by straining legal ties, or misapplying legal phrases which were devised for a totally different set of conditions.

Finally, there is a third class of jurisdiction, where the Native sovereign is for a time set aside and the ever-present, though sometimes latent, Imperial power is called into direct activity through failure of the ordinary local authority. As all power centres in and radiates from the Imperial Government, it makes such

arrangements as seem most just and expedient. This class of jurisdiction, to which for lack of a better term the name of *substituted* jurisdiction is given, approaches somewhat closely the class of extraordinary residuary jurisdiction. But there is this distinction between the two classes. When the British Government takes from a chief his regular jurisdiction in a claim preferred against him by one of his own Bhayad, it does not interfere with the rest of his jurisdiction. It merely asserts an extraordinary right to subject to an impartial trial a dispute in which the chief is himself personally interested, and the adverse party is one to whom, for special reasons of state and not of law, the intervention of the Imperial power is conceded. But when, owing to minority or misgovernment, a chief remains nominally sovereign, but cannot be trusted with the exercise of his own legitimate judicial functions, and the whole administration of justice is undertaken for him by the British Government, no residue of jurisdiction is left to him for the time being. The paramount power steps in to govern the state as its ruler for all purposes. The difference requires a distinct class to represent the more extensive control exercised, and, accordingly, in this chapter British jurisdiction will be treated of as either delegated, residuary, or substituted.

Obstacle to British jurisdiction arising from treaty.

§ 134. It must be admitted that the intrusion of British jurisdiction, which has been described in the last section, presents a somewhat formidable list. Two questions will at once occur to the reader who has pursued thus far the inquiry into the relations of the Native states with the British Government. The first is, How can this extension of jurisdiction—as, for example, to the trial of European British subjects

in foreign territory—be justified by the terms of the treaties with their princes? The second is, On the assumption that the Native state forms no part of British India, how can British jurisdiction over the subjects of its ruler who are not British subjects—as, for instance, residuary jurisdiction—be rendered legal according to British law? I propose to deal in this section with the first and least difficult of these questions. The ruler of Bhopal, in 1863, invited attention to the Treaty of the 26th of February 1818, which contained this assurance: "The jurisdiction of the British Government shall not, in any manner, be introduced into that principality." The reply given to Her Highness was based on three considerations—the intention of the treaty, its proper construction, and the effect of Parliamentary legislation. The intention of the engagement was to protect Bhopal territory in its internal sovereignty over its own subjects. The words quoted conveyed a guarantee against the introduction of the ordinary judicial system of British India and the encroachment of British Law Courts created by the Legislative authority of British India. The mere exercise of jurisdiction over British subjects outside the territorial limits of British India could not be construed as the introduction of the jurisdiction of Government into Bhopal, which would signify the extension of British jurisdiction over all persons within the area. Parliament had, in 1861, passed its Statute 24 and 25 Vic. cap. lxvii., which gave the Legislative Council authority to make laws for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty. The Indian Penal Code provided in 1860 for acts committed beyond the territories vested in Her Majesty by the

Statute 21 and 22 Vic. cap. cvi., as if such acts had been committed in them. Finally, Bhopal had by the treaty to which it referred undertaken to "act in subordinate co-operation with the British Government"; and where the British Legislature had empowered the Indian Government to visit its subjects with penalties, the Bhopal state might reasonably accept the position in which the Government of India was itself placed. That Government could not legally surrender or compromise a special system and procedure laid down by the supreme authority of Parliament for a class of persons subject to its jurisdiction.

Obstacle to British jurisdiction arising from legal limitations.

§ 135. The second question cannot be answered by pitting the authority of Parliament or of the Indian Legislature against that of the Native state. It has never been contended that Parliament can pass laws operative in foreign territory on those who are not British subjects. When, therefore, the Indian Government avoids annexation, and exercises, on behalf of a Native prince, residuary jurisdiction over those who are his subjects, or with his consent administers justice in a civil station or on a railway line which has not been incorporated into British India, how can such jurisdiction be legally justified? In discussing the question, it is desirable to state and to prove two preliminary propositions: first, that the Indian Legislature has no power to legislate for those who are not subjects or servants of His Majesty, and reside, or are in foreign territory; secondly, that, as a matter of fact, the Government of India has, and exercises, jurisdiction over other than British subjects and servants within such foreign territory. The solution of the difficulty can only be explained when the difficulty itself is fully

appreciated. The powers of the Indian Legislature, both in regard to British India and in regard to foreign territory, must therefore be examined with as much attention to conciseness as the intricacy of the subject will permit.

Limitations on the legislative powers of the Indian Councils.

§ 136. The legislative and judicial systems of British India have passed through four stages or periods. The year 1773, when the famous Regulating Act, Statute 13 Geo. III. cap. lxiii. was passed, closes the first period, and opens the second, which ended with the enactment of Statute 21 Geo. III. cap. lxx., passed in 1781. The third period ends with the Statute passed in 1833, namely, 3 and 4 Will. IV. cap. lxxxv.; and the fourth was closed by the Act of 1861, the Indian Councils Act, Statute 24 and 25 Vic. cap. lxvii., which, with its amending Acts, still governs the legislation of Her Majesty's Indian possessions. At the outset the Company's officers considered that their concern ended with their own establishments. But they soon discovered that the Natives of the country eagerly sought justice in their Courts, although no law gave them jurisdiction in such cases. Appeals to them became more and more urgent before August 1771, when at last the Directors informed their President and Council that they intended "to stand forth as Diwan." The character of their judicial administration up to the year 1773 may be gathered from the Charter, given in 1661 by Charles II., which authorised the Governor and Council "to judge all persons belonging to the said Governor and Company, or that should live under them, in all causes, whether civil or criminal, according to the laws of the kingdom." A liberal interpretation was of course given to this authority. In 1726 it was officially stated that the

Company had, by its strict distribution of justice, encouraged not only "our own subjects, but likewise the subjects of other princes and the natives of adjacent countries, to resort to and settle in the said forts and towns." Thus began that immigration of populations seeking justice and protection which has created Calcutta, and changed Bombay from a fishing village to the third most populous city in the British Empire. In 1726 Mayor's Courts were established in the three Presidency Towns, and in 1753 Courts of Requests were similarly created, and the pressure upon the civil jurisdiction of the Mayor's Courts was for a time relieved. The Court of Directors was authorised to make "bye-laws, rules, and ordinances for the regulation of the several Courts of Judicature."

In 1773 the British Parliament referred to the Charter establishing the Mayor's Courts as "not sufficiently providing for the due administration of justice." The famous Regulating Act, 13 Geo. III. cap. lxiii., which gave increased powers to the Supreme Government in India, also established a Supreme Court of Judicature at Fort William as a King's Court, and not a Company's Court, to perform all civil and criminal jurisdiction, and to do all other things necessary for the administration of justice. The extent of its jurisdiction over all British subjects residing in the Provinces of Bengal, Behar, and Orissa, and any of His Majesty's subjects, or any persons employed by them or the Company, was fixed by section 14. The Supreme Government was, by the 36th section, empowered to make reasonable regulations for the good order of Fort St. William and places subordinate thereto, provided that such regulations were registered in the Supreme Court

with its consent. The dual control and jurisdiction of these two "Supreme" Powers was not only indistinctly traced, but it necessarily led to conflict. No explanation was given of "British subjects," and the territorial extent of their respective authorities was indefinite. Thus the two independent and rival powers, the Supreme Council and the Supreme Court, faced each other, and soon came to blows. In 1781 Parliament, by Statute 21 Geo. III. cap. lxx., closed this second period of strife, recited the doubts and difficulties of the situation, and deemed it "expedient that the lawful Government of the Provinces of Bengal, Behar, and Orissa should be supported," and "the inhabitants maintained and protected in the enjoyment of all their ancient laws, usages, rights, and privileges." The English law was no longer to govern Native India or supersede the Native law.

It will be observed that so far as the extent of jurisdiction or the definition of subjects was concerned, the Statute of 1781 solved no difficulties, and it was not until 1797 that Statute 37 Geo. III. cap. cxlii. threw back light and its confirmation upon the proceedings of the Indian Government. Parliament then by implication recognised an extension of the Council's jurisdiction which was hardly warranted by law or Charter: "Whereas certain regulations for the better administration of justice among the Native inhabitants and others, being within the Provinces of Bengal, Behar, and Orissa, have been from time to time framed by the Governor-General in Council," it was ordered that such Regulations should be registered in the Judicial Department and formed into a regular Code, and all Provincial Courts of Judicature were to be bound by the said Regulations. The constitution of a Supreme Court in Madras, and subsequently by

Statute 4 Geo. IV. cap. lxxi. in Bombay, and the extension of the Legislative powers of the three Councils of Bengal, Madras, and Bombay in 1813, need only be mentioned. The revised Code of the Regulations of the Governor-General's Council commencing in 1793, that of Madras in 1802, and that of Bombay, which in 1827 codified the law from 1799, bore testimony to the necessity which Parliament had recognised of giving freedom to the Governments of the three Presidencies. It was inevitable, however, that a system which had grown up as described should lead to anomalies and conflicts, and once more a remedy was sought in centralisation.

The Act passed in 1833, Statute 3 and 4 Wm. IV. cap. lxxxv., opened the fourth period, and gave power to the Governor-General in Council to "make laws and regulations for all persons, whether British or Native, foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdiction thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of Princes and states in alliance with the said Company"; but it excepted laws for punishing mutiny, or affecting the prerogative of the Crown, or the authority of Parliament, or the unwritten laws or constitution of the kingdom whereon may depend in any degree the allegiance of any person to the Crown, or the sovereignty or dominion of the Crown over any part of the said territories. The centralisation of the Legislative power in the Council of India demanded in course of time the addition to that Council of representatives of the local Governments. The necessary change of law was made in 1853, by

Statute 16 and 17 Vic. cap. xcv.; and it helped to prolong the arrangement made in 1833, despite the growth of the Company's territorial possessions and the consequent strain caused by centralisation.

The suppression of the Mutiny, and the transfer of the Government of India to Her Majesty, by Statute 21 and 22 Vic. cap. cvi., passed on the 2nd of August 1858, led up to the next and final change of policy in 1861. The territories over which Her Majesty assumed dominion were described in the Act of 1858 thus: "All territories in the possession, or under the Government of the said Company, and all rights vested in, or which, if this Act had not been passed, might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name; and for the purposes of this Act, India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such rights as aforesaid." On the 1st of August 1861, Statute 24 and 25 Vic. cap. lxvii. was passed, known as the Indian Councils Act. As amended from time to time, it enlarged the Councils; it reserved to the Governor-General the power of making ordinances; it created Local Councils for the Presidencies and Provinces, excluding from their legislative authority any laws affecting certain Imperial matters, or the relations of Government with foreign princes or states; and it defined the extent of the powers of the Governor-General's Council. Those powers are limited to making or altering laws "in the Indian territories now under the dominion of Her Majesty," "for all persons whether British or Native, foreigners or others, and for all Courts of Justice whatever, and for all places

or things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty." In 1865, by Statute 28 and 29 Vic. cap. xvii., this power of legislation was extended to all British subjects of Her Majesty within the dominions of princes and states in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise. Finally, in 1869, by Statute 32 and 33 Vic. cap. xcviii., further doubts were removed, and the Legislature's authority was extended over "native Indian subjects of Her Majesty, without and beyond as well as within the Indian territories under the dominion of Her Majesty."

From this review it will be seen that at first, whilst dominion was growing, the Company's jurisdiction was extended beyond its own servants and the King's subjects over the natives of the country in the vicinity of its factories without any precise authority. Room was in fact left for the expansion of its legislative power. But from August 1858 we gain a definite idea of what is meant by Indian territories under the dominion of His Majesty, and within those limits alone can the Legislature of India legislate for all persons and places to the extent of the powers conferred upon it by Acts of Parliament. It can also make laws for native Indian subjects of the King, or native Indian soldiers in his Indian forces, operative in any part of the world, and for British subjects of European descent and servants of Government in the Native states. And finally, by special Acts of Parliament, it can make laws with extra-territorial applications concerning particular subjects such as the Indian Marine, Merchant Shipping, and the Slave Trade. This, however, is the full

extent of the extra-territorial Legislation entrusted to the Indian Legislature. But from what has been written above British jurisdiction is actually being exercised in Native states to an extent far wider than that covered by the authority either of Parliament or of the Indian Legislature, and it may be added that both Parliament and the Indian Legislature countenance, support, and regulate the exercise of this extended jurisdiction although it is neither created nor confirmed by either of them.

More extended powers of the Executive Council of the Governor-General.

§ 137. Whence then are these enlarged powers of jurisdiction derived, powers which profess to introduce laws and jurisdiction for persons not being British subjects into places outside British India? When the Indian Legislature supported their exercise by the Governor-General in Council, and passed the Extradition and Foreign Jurisdiction Act XXI. of 1879, it recited the following authority: "Whereas by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India." If jurisdiction over British subjects had alone been contemplated, a single reference to the Statutes would have sufficed. The same Act carefully discriminated between the three objects of the law of 1872 which it was about to amend, as first of all passed to remove doubts as to how far the exercise of such power and jurisdiction was controlled by and dependent on the laws of British India, and to consolidate and amend the law relating to the exercise and delegation of such power; secondly, as dealing with offences committed by British subjects beyond the limits of British India; and, thirdly, as relating to the extradition of criminals. In

regard to the first matter, the Act of 1879 declared, in section 5, that "a Notification of the exercise by the Governor-General in Council of any such power or jurisdiction shall be conclusive proof of the truth of the matters stated in the Notification." The Act of 1879 has been replaced so far as extradition is concerned by Act XV. 1903, while the whole of its provisions, including section 5, on the subject of foreign jurisdiction have been repealed. But the account just given serves to explain the comprehensive terms of the preamble of the Indian (Foreign Jurisdiction) Order in Council 1902, under which the extra-territorial jurisdiction of the Governor-General in Council as previously exercised was confirmed, and for the future placed on a wider and firmer basis. It runs as follows: "Whereas by treaty grant, usage, sufferance, and other lawful means His Majesty the King has powers and jurisdiction, exercised on His behalf by the Governor-General of India in Council in India, and in certain territories adjacent thereto." The limits of the order are declared to be "the territories of India outside British India, and any other territories which may be declared by His Majesty in Council to be territories in which jurisdiction is exercised by or on behalf of His Majesty through the Govenor-General of India in Council, or some authority subordinate to him, including the territorial waters of any such territories." The recital of the above clause is enough to show at a glance that the extra-territorial powers and jurisdiction of the Government of India go far beyond the legislative powers entrusted by Parliament to the Indian Legislature, and rest upon an authority which no British legislature can itself create or assert.

§ 138. We have now to see how the exercise by

How the problem of projecting British jurisdiction was solved.

the Governor-General of his foreign jurisdiction over persons who are not British subjects, and in places not under the King's dominion, has been arranged so as to steer clear alike of the difficulties created by treaty, and of those which arise from the fact that the legislative authority of the Legislative Councils of India is not co-extensive with the authority exercised by the Governor-General in Council, or, in other words, the executive Government. The solution of the difficulty will be best understood by contrast with two proposals which were much debated in former years. Attention was once invited to the system of Germany, where the Imperial law was at one time deemed to embrace the laws of the component states within itself, and at a later period the proceedings of the Courts of some of the states were made subject to revision by a supreme Court of the Empire. It was then proposed to establish an Imperial judicial organisation in the Indian Empire, whereby an appellate and supervisionary jurisdiction would be exercised over all the Native states. The objection taken to this proposal may be gathered from the preceding chapters of this book. The British Government, entrusted with authority to provide for the general defence, has not yet been authorised "to promote justice" or undertake a general control over the judicial system of the protected states. Parliament, by limiting its intrusion on behalf of British subjects and other persons specially named, has recognised the limits of its personal jurisdiction. A second proposal was then put forward dealing only with the petty states, or groups of states, where Residuary jurisdiction is most largely exercised. The advocates of this course relied upon an argument advanced in the trial of the case of Dámodhar Gordhan *v.* Deoram

Kanji by the Privy Council, to which reference has been made in the fourth chapter of this treatise. It was argued that, when the British Government classified 188 chiefs of Kathiawar in seven classes, and defined the jurisdiction of each class, its action constituted a general, direct, and unequivocal exercise of Imperial sovereignty. "All persons and places," other than those over whom or which these jurisdictions of the chiefs were fixed by Imperial authority, became, it was urged, protected and subject to British jurisdiction (*protectio trahit subjectionem*), and these parties were really not foreigners, but subjects of the British Government. To this suggestion two replies may be made. In the first place, the extent of the Legislative power of the Indian Councils is territorial, and these "places" lie without doubt beyond the possessions vested in Her Majesty in 1858, or since acquired by her. In the second place, if it is sought to treat the "persons" referred to as covered by the phrase "British subjects within the dominions of princes in India" (Act 28 and 29, Vic. cap. xvii.), this would be an extension of allegiance opposed to long-established practice, the guarantees of treaties, and the wording of the Indian Naturalisation Act. One has only to recall the process by which the Company acquired jurisdiction over neighbouring territory, when as yet its Charters gave no jurisdiction save over the factories and their establishments, in order to realise the danger which the application of this theory would occasion to the Native states. All the princes would view with apprehension the intrusion of such a wedge into their sovereignties; and they would point to the repeated assurances of the British Government that British law shall not be introduced into their territories. The instrument

of transfer which restored to the Maharaja of Mysore "the government thereof" was very precise in determining the extent of foreign jurisdiction reserved by the British Government. It declared that "British sovereignty" should cease in the island of Seringapatam, and that the Maharaja should hold that island upon the same conditions as he held the rest of Mysore. Obviously, therefore, no countenance was given to the theory of an Imperial sovereignty. At the same time provision was made for the exercise of British jurisdiction in Cantonments to which His Highness was to "make no objection." Plenary criminal jurisdiction over European British subjects was retained in its own hands by the Government of India, and if a British railway was constructed in Mysore plenary jurisdiction within such land was to be transferred by the Maharaja. The clear intention of the document was to assert no general power of introducing British sovereignty or its jurisdiction into Mysore, but to define as clearly as possible the partial drawback or sacrifice of his own sovereign powers which the Maharaja might be called upon to make in respect of certain places and persons. The authority, in fact, for the introduction of British foreign jurisdiction, was made to rest upon the Maharaja's consent guaranteed by the terms of the transfer. His sanction was needed for what may be described as delegated jurisdiction, by which is meant jurisdiction inherent in his own territorial sovereignty but yet suffered to be exercised by a foreign government.

The need for jurisdiction over railway lands, and over civil stations, and other special areas in foreign territory is so obvious, that, with the rejection of these two proposals, some other device was needed. The plan adopted may seem to be a half-way house

to annexation, but in reality it removes that danger. The pledges given to the chiefs have been kept by entrusting to the Governor-General in Council, as an act of state, the jurisdiction with which the chiefs have for that purpose parted. The jurisdiction which the Governor-General in Council exercises through his delegates the Political agents, is the Native state's, or foreign, jurisdiction; a portion of the full attributes of sovereignty or jurisdiction which, as was shown in the second chapter, are distributed in various degrees. With the chief's consent, express or implied, the Governor-General in Council shares with him the attribute of sovereignty known as jurisdiction. The subject of the Native state who may contest the authority of the Courts thereupon established by the Governor-General in Council, will get no redress from the sovereign of his state who admits the right of British interference. If he appeals to British law, he will be referred to the provisions of British law, which, although they do not confer, yet support and regulate the exercise of foreign jurisdiction in the case in question. While Act XXI. 1879 was in force, its section 5 declared that the Notifications of the Governor-General in Council issued under the Act were conclusive; and, since the repeal of that Act, the Foreign Jurisdiction Act, 1890, and the King's Order in Council of the 11th of June 1902, together with the Notifications published under it by the Governor-General in Council, warrant the officers concerned in exercising the powers entrusted to them, and prevent other British subjects and British Courts from raising any objections. The Courts established by the Governor-General in Council thus solve the difficulty. It seems a small difference, but is in reality one of importance to the sovereign of the Native

state. The Courts which intrude into his territory do not rest on the same legislative basis as the Courts of Justice in British territory. The British Legislature is not admitted, and it cannot encroach further. It can neither create nor meddle with the Courts, although it indirectly protects them from challenge in British territory. The Legislature concerns itself only with its personal extra-territorial jurisdiction. Beyond that it leaves it to the Government of India, in its executive capacity, to arrange any difficulties that may arise either with the sovereigns or the subjects of Native states in respect to the exercise of foreign jurisdiction over places or persons outside British India. The Native princes feel satisfied that their sovereign privileges or reversionary rights are not obliterated, nor endangered, by the intrusion of the judicial system of the British Empire, and the Governor-General takes care that the administration of justice, the law applied, and the procedure adopted by the Courts established by him, shall be in harmony with the spirit of British justice. When the subject of railway jurisdiction is dealt with, it will be found that the Native states usually cede "full jurisdiction short of sovereign powers." The reservation saves the railway lands ceded by them from annexation, whilst the Governor-General is able to provide the necessary Courts for the trial of railway cases, and to equip them with the necessary laws and rules of procedure.

Cantonment jurisdiction.

§ 139. With this preliminary explanation of the difficulties of providing for foreign jurisdiction, we may now examine in detail the five classes of what has been termed, in contradistinction to substituted where no consent is asked, or to residuary where no consent is needed, delegated jurisdiction. The first

on the list is Cantonment jurisdiction. The British Government has the absolute right of occupying any military positions it deems fit in any of the protected states. It has received the authority of its allies to protect them, and it may, by consequence of this delegation and without further reference to them, establish its cantonments in their principalities. It is essential to the efficiency and safety of the army so cantoned that it should be placed exclusively under British jurisdiction. Just as the ship of war, *qui maritimus est exercitus*, sails into a foreign port carrying with it its own equipment of laws and disciplinary rules, so the British army, to quote Wheaton, section 95, "stationed in the territory of another state, is exempt from the civil and criminal jurisdiction of the place," and fills the vacuum with its own laws. The first step taken by the authorities on the occupation of a foreign cantonment is to mark off the land so occupied and define its limits. When this is done, full jurisdiction over all persons and things within the cantonment is asserted without any further reference to the chief. British laws which apply *proprio vigore* to British subjects or servants in foreign territory of necessity follow the army itself into its cantonment. But the invasion of British jurisdiction goes farther. The efficiency of an army depends largely upon the influence of surrounding circumstances. If intoxicating liquors are offered for sale without restriction by the subjects of the Native state living in the cantonment limits; if the soldiers' accoutrements are bought up by traders; or if sanitary arrangements are wholly neglected, and smallpox and other contagious diseases are left uncared for; the force which occupies a foreign cantonment would become useless for the duties of general defence.

Accordingly, the inability of the British Legislature to pass laws for the subjects of a foreign state is cured by the capacity of the Governor-General in Council to make regulations and establish Courts in the cantonment outside British India. All persons resident, or found, within the cantonment are brought under subjection to British law and the cantonment Courts. If they are not already, as British subjects or servants of the Crown, amenable to the law of British India, the Governor-General in Council notifies that the said British Act is applied by him under the authority of the Foreign Jurisdiction Act and other lawful powers, to the cantonment. He declares the authority of the Courts and the procedure they are to adopt; and thus the whole area of the cantonment, whilst it still retains its character as foreign territory, is occupied alike by British troops and by the laws and Courts which are necessary for its effective occupation. During the period of occupation, the Native state law and jurisdiction are ousted, and where the ordinary jurisdiction and British laws passed by the Indian Legislature cannot extend *proprio vigore* to the rest of the cantonment population, the authority of the Governor-General in Council extends them. The sovereignty of the ruler of the country survives, although latent and suppressed for the time being. The chief is not consulted as to the measures which the British Government considers it proper to introduce for the administration of the cantonment, since his consent is implied in his obligations of military defence; but, when the cantonment is given up, his sovereign rights and powers revive. If the territory had ever been incorporated into British India, its rendition would require an act of the Legislature, and that difficulty is avoided.

Railway jurisdiction.

§ 140. The history of British jurisdiction over portions of railways in foreign territory supplies an instructive contrast between the ordinary British jurisdiction once introduced into Baroda in 1862, and the foreign jurisdiction now universally exercised by the Governor-General in Council. Of the necessity for acquiring full jurisdiction, civil and criminal, over all lines of main communication in India, there is no occasion to write at length. Whether the line is made at the cost of the British taxpayer, whether it is made by a British company under a guarantee, or whether, as in Kathiawar, it is made by one or more states as proprietors, the avoidance of a break of gauge in jurisdiction is equally desirable. The defence, as well as the general welfare, of the Empire depend upon the efficient working of through lines of communication. There must be one law affecting the administration and the working of a line of railway throughout its whole length. The very safety of the passengers requires uniform precautions against any neglect of duty. The vehicles must be safe, the line and its bridges looked after, and the various details of the traffic department regulated by one common law. The railway police employed on the several parts of the line must work together. The Kathiawar railway just mentioned traverses more than a dozen jurisdictions in the space of a hundred miles. If the police were hampered in their duties by extradition, and by the constant necessity for adjusting their procedure to the requirements of a new law at each station, the protection of the lives and property of the passengers would be compromised. The interests of the public require through booking of goods and passengers, and with divided jurisdictions the responsibility for loss or injury could never be fixed.

The British Government is not the only interested party. Every Native state is equally concerned in desiring uniformity of jurisdiction over any piece of railway which becomes part of a line of communication between Native territory and British territory or between one Native state and another. As soon as any line ceases to be wholly isolated in a Native state and forms a link in a chain of communication with another jurisdiction, the cession to the Imperial Government of full jurisdiction, civil and criminal, by each state traversed by it is an obligation which has readily been understood and accepted by every important state in India. It was, at first, supposed that this obligation would be best fulfilled by the surrender of sovereign and territorial rights, and by the annexation of the strip of land required for the railway to the British possessions. Accordingly, when the line from Bombay to Ahmedabad through Baroda territory was constructed, the Gaikwar was induced to surrender his sovereignty. The Indian Legislature thus acquired authority to legislate for the new addition to the possessions vested in Her Majesty, and Bombay Act I. of 1862 was passed by the local Legislative Assembly in order to bring the strip of ceded land under British regulations. But the inconvenience of this procedure was soon felt when one piece of land already ceded for a station was discarded and another piece required. The discarded piece could not be retransferred to the Native state without legislation, and the addition required a further Act. Moreover, the sensibilities of the Native princes are wounded by the transfer of even the smallest slice of their territories to British dominion. The present practice avoids all these difficulties, and secures the reversionary rights of the

Native states. Jurisdiction and full powers of administration instead of sovereignty are ceded to the Governor-General in Council, who thereon notifies the application to the foreign territory occupied by the line and its stations, of the requisite laws, and establishes the necessary Courts for their administration under the provisions of the Foreign Jurisdiction Act. It is, however, important to bear in mind, as shown by the case of Muhammad Yusuf-ud-din (24 I.A. 137), that the nature and extent of the railway jurisdiction vested in the Governor-General in Council must be decided upon the construction of the correspondence in which the cession of jurisdiction is embodied.

Jurisdiction in civil stations.

§ 141. British jurisdiction is occasionally required over particular places or sites in foreign territory, either because they form the headworks of Imperial canals, or because they are centres of British trade or of the influx of European residents. The main motive for acquiring jurisdiction is the avoidance of entangling disputes with the officials of the Native state which might terminate in more serious intervention. The advantages secured by these arrangements are mainly British, and the other states of India are not concerned in them as they are in the cantonments and railways, in which all the protected states possess a direct interest. The Government of India must therefore look to special agreement with the state concerned in order to acquire the jurisdiction it needs. Instances of such delegated authority are to be found in Kathiawar, where two of these stations have brought into prominence the legal difficulty which was discussed in the early part of this chapter. The chief of Wadhwan, on the 7th of January 1864, assigned in perpetuity a piece of land near his capital "for the

purpose of assisting Government in the administration" of a political District, and it was agreed that if the station was ever abandoned it should revert to the Native state. The station has become the centre of the local cotton trade and an important junction of railways. In a suit brought by one Triccam Panachand *v.* the Bombay, Baroda, and Central India Railway Company and others, the High Court held incidentally that the civil station of Wadhwan had been placed by the transaction just noticed within the limits of British India. This decision was passed in March 1885, and in the following November the same High Court ruled in regard to the Rajkote civil station, which was ceded under almost similar circumstances and conditions, that it was not a part of British India within the Statute of 1858, namely, 21 and 22 Vic. cap. cvi., and that the British jurisdiction which was exercised in Rajkote was such as was dealt with in the Indian Foreign Jurisdiction Act XXI. of 1879. The later decision embodies the views and practice of the British Government, which regards its civil stations in Native states, and its canal works erected in foreign territory by the consent of the states, as remaining outside British India. The laws which are introduced are not passed by the Legislative Councils of India, but are applied by the Government of India; and the Courts which administer justice within them are Courts established by the Governor-General in Council, or if for convenience' sake a neighbouring British Judge or Magistrate is given authority over these areas, he exercises his functions not as a British Judge or Magistrate, but under special appointment, under the provisions of the Foreign Jurisdiction Act.

§ 142. The house and premises occupied by the

Residency jurisdiction.

British Resident or agent appointed to the charge of British relations with one or more Native states are, like a British cantonment, occupied at the same time by the law of the nation which deputes its representative. The consent of every Native state to the appointment of a British agent, together with the rights and privileges that must accompany him, is assumed as a matter of course. Possessing no rights of negotiation or legation, a protected sovereign in India has no option in the matter of receiving an agent. He is bound to accept any officer appointed and to treat him with due respect. When the Company dealt with a few states on equal terms, it followed the custom of international law. Thus the Treaty with the Sind Mirs, concluded in August 1809, which was not a treaty of protection but one of reciprocal friendship, provided for the "mutual despatch of the Vukeels of both Governments." But when the Company undertook without reservation the protectorate of the Native states, and restricted their rights of independence, it excluded from its engagements references to accredited agents, and took what measures it considered desirable for the protection of its own and their interests. Since the British Government takes it for granted that its agent will be received by a protected Prince, it also expects that all facilities for the performance of his duties will be accorded. If International law recognises the necessity that public Ministers should be independent of the local authorities in order that they may fulfil the duties of their mission, and that the exemption of themselves and their families and suite from territorial jurisdiction is reasonable, a similar exemption is much more required in India, where in even recent times an attempt to poison a British Resident

has been committed. At the same time, care is taken to prevent the exercise of Residency jurisdiction from prejudicing the interests of the Native state. The Political agent exercises jurisdiction over his own servants or British public servants, but he is careful not to allow his Residency to become an asylum for fugitives from the local jurisdiction. As a further proof of the distinction drawn between the agent's residence and the Native state's territory it may be mentioned that, if a new ruler of the state is to be installed, the ceremony would most appropriately be performed outside the limits of the Residency, since these premises are quasi-British territory.

Personal jurisdiction over British subjects.

§ 143. The question of personal jurisdiction over British subjects is somewhat complicated by the distinction between their legal status and the tendency of usage. Parliament granted to the Indian Legislatures power to legislate for native officers and soldiers by Statute 3 and 4 William IV. cap. lxxxv., for servants of the Government of India by 24 and 25 Vic. cap. lxvii., for British subjects by Statute 28 and 29 Vic. cap. xvii., and for native Indian subjects by Statute 32 and 33 Vic. cap. xcviii., without and beyond, as well as within, the Indian territories. The practice of the British Government in its diplomatic engagements with foreign powers has not differed from that of Parliament. In the eye of international, as well as of English constitutional law, the status of an Indian British subject is the same as that of an Australian or an European British subject. And yet, in practice, a distinction is drawn between these two classes of the King's subjects. So far as extradition is concerned, the Indian Act XV. of 1903 excludes European British subjects from Chapter III. of that Act which deals with the surrender of fugitive

criminals to the Native states. And in the same way British Indian Courts or Courts of Foreign jurisdiction deal with offences committed by Europeans in Native states, while Indian British subjects are handed over to the Courts of the Protected Princes in whose territories they have offended. This is one of the anomalies that abound in India, of which the very existence of British rule in that vast country is itself a notable example, anomalies with which practical statesmen must deal, however intolerable they may seem to the student of law. The justification for this differential treatment of the King's subjects in respect of crimes committed in the protected states rests in the first place upon distinctions of national character and religion. As Lord Stowell has pointed out, the Hindu system is unwilling to recognise the equality of foreigners with the natives in the eye of its law. "In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted; and they become incorporated to almost the full extent. But in the East from the oldest times an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation: they continue strangers and sojourners as their fathers were—*Doris amara suam non intermiscuit undam.*" This attitude of caste and of the Hindu mind is naturally aggravated in the national home of the Hindu faith by the proximity of a western system introduced into British India. The laws of Menu are opposed to religious toleration and to the extension of equal rights to all citizens, and although many changes have taken place even beyond the frontiers of British India, the time has not yet arrived when the extra-territorial jurisdiction of the King can safely be dis-

pensed with. Indeed in every Native state provision is made for it by the appointment of a Justice of the Peace for that state. It must be admitted that the relief which capitulations and treaties provide for Europeans in foreign non-Christian countries is also needed in the protected states of India. With the Indian subjects of the King the case is different. Their own social system prevails on each side of the line that separates British India from the Native state. Under the supervision of the Political agent the courts of the state may be trusted to do justice to their claims and rights, and if for any reason they should fail to do so, extradition would be refused and a remedy devised.

There are other reasons besides those mentioned which justify the retention of jurisdiction over European British subjects. The Government of India has restricted the employment of Europeans by the Indian sovereigns, and it is in harmony with this restriction that it should, if necessary, retain a jurisdiction with which it has been invested by Parliament and the law of India. It is true that the same law gives it also jurisdiction over native Indian subjects. But with regard to them, the circumstances differ. There is no such distinction in religion, education, and social habits between Indian subjects and the subjects of the Native states as to require the extension to them of rights of exterritoriality to the same extent as to European British subjects. Again, very few Native states possess jails in which European convicts could, with proper regard to their health, be incarcerated. The embarrassments into which a Native state might be drawn by any injudicious proceedings against an European British subject suggest the wisdom of avoiding the exercise of a right of trial which might

prove a doubtful boon to them. The necessity for conducting the proceedings in a language intelligible to the European accused would of itself prove inconvenient in many cases and delay the trial. For these and other reasons the rule is generally observed that if an European has committed an offence punishable by Indian law he is surrendered for trial by a British Court.

To this general rule certain exceptions will be stated presently, but before this is done a reference is invited to the Mysore instrument of transfer set out at length in Chapter VI. Its article xvii. declares that plenary criminal jurisdiction over European British subjects shall, notwithstanding the transfer of sovereignty, "continue to be vested in the Governor-General in Council," but it leaves room for the restoration of a part of it by delegation. "The Maharaja shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the Governor-General in Council." In other words, the territorial sovereignty was transferred to the Maharaja with this exception that the Government of India retained the jurisdiction over Europeans, leaving, however, the door open for the delegation or surrender of this jurisdiction in any particular cases. What those cases may be will appear from the next paragraph.

Where an European has offended against the laws of a Native state, without rendering himself liable to punishment for breach of a British law to which he is amenable beyond British India, a difficult situation may arise. The law of the territorial sovereign may be from an European point of view either reasonable or the reverse. The breaker of the law is in either case resident in the territory and liable to the penalties

provided by the Native state's ordinance. If the offence were one against the revenue or the sanitary laws of the state, he ought to be punished if found guilty. If, on the other hand, the offence charged was that of eating his customary food, questions might reasonably arise as to the propriety of his trial and conviction. All, perhaps, that need be said here is that in all such cases the British Government would decide upon their merits. It would be held that the British subject was not deprived of his rights of protection by residence out of the British possessions; he might in fact invoke the assistance of the political officer to secure the privileges of just and civilised treatment which are his birthright. The protected prince on his side could not reasonably object to a provision, embodied in the Turkish capitulations of 1675 and confirmed by treaty in 1809, whereby if any Englishman happens to commit a crime, "the Governors in our sacred dominions shall not proceed to the cause until the ambassador or consul shall be present." For the rest, whether the European should be left to be tried by the state's Court, or by a Court of Foreign jurisdiction in the state, or again whether the Native state should be advised to proceed no further with the charge, are questions which would be decided by the British Government after full discussion and consideration of the circumstances.

There is further the case of an European British subject who has taken service with a protected prince in whose dominion he commits an offence. In that instance, if the laws and courts of the state are on a satisfactory footing, the European British subject would, it may be presumed, be left to the jurisdiction of the native Courts, subject to a right of intervention by the political officer on sufficient reason being

shown in the particular case. Although it has been argued in this chapter that the protected princes have tacitly or otherwise delegated or ceded to the protecting power their territorial jurisdiction over Europeans, yet that presumption must be weakened in an individual case where an European has entered the service of a Native state. He may be held to have accepted a general allegiance to the ruler of the state, and to have bound himself to obey its laws and submit to his master's jurisdiction.

Extradition of accused persons.

§ 144. Before leaving the subject of delegated jurisdiction, it is convenient to revert to the law of extradition, to which some reference has already been made. It is not only in dealing with European fugitive criminals that reciprocity in the matter of extradition is inadmissible. It has been seen that, whilst the British Government does not as a rule extradite an European offender to a Native state, it demands the extradition to itself of such offenders. In the same way the British Government expects the surrender of military deserters from the Imperial army, whilst it cannot extradite to a Native state a deserter from its army. The early treaties made by the Company frequently contemplated the reciprocal surrender of fugitive criminals, and even of revenue defaulters. Thus the treaty of the 6th of June 1802 negotiated with Baroda contained this clause: "In future the subjects of each state, who may take refuge with either, shall be delivered up, if the state from which such party or parties shall have fled, appear to have any demand of debt, or any just claim against him or them." This clause was repeated in 1805, and in 1817 it was modified to the following extent: "That offenders taking refuge in the jurisdiction of either party shall be surrendered on demand without·

delay or hesitation." English history, however, has shown, as for instance in the treaty made with France in 1852, that a treaty of extradition cannot be brought into operation unless the law gives its sanction, and in India, when the law of extradition limited the cases and prescribed the conditions under which offenders were to be handed over to the Native states, the Government could not avoid "delay or hesitation." It had no option but to comply with the law of British India, whatever appeals the ruler of Baroda might make to the terms of his treaty. In this respect neither Baroda nor any other Native state lies under similar disabilities. For there is hardly a state in India in which the laws do not emanate from the will of the sovereign, and even where there is a legislative assembly it is under the guidance of the minister. Accordingly, there is no such difficulty to be experienced by a Native ruler in complying with British demands for the surrender of criminals as the Government of India must encounter in meeting similar demands from him. The two parties to an extradition treaty are not equally placed for the purpose of giving effect to it.

In these circumstances, extradition treaties with the Native states have fallen into disfavour. One which was negotiated with the leading state of Hyderabad in May 1867 was modified in July 1887, so as to give full play to the greater facilities afforded by the passing of a new Extradition Act in British India. Between 1867 and 1869 treaties were negotiated with most of the states in Rajputana, but extradition between them and British India was regulated by Act XXI. of 1879, after the passing of that Act, in preference to the arrangements embodied in those agreements. The law which now governs

extradition is Act XV. 1903, under which treaties are safeguarded by section 18, but the provisions of the Act for the surrender of fugitive criminals to "states other than foreign states" (to which latter states the Extradition Acts passed by Parliament in 1870 and 1873 apply), that is to say to the Native states of India, are so convenient that it is no longer desirable to make fresh treaties on the subject with the protected princes.

It is unnecessary to enter at farther length into the provisions of the Indian Act of 1903, but a few general remarks may be made on the subject. The primary object of the extraditional arrangements is, as has been pointed out to the states, not the attainment of the nearest feasible approach to mutual surrender, but the enforcement of effectual measures for the suppression of crime. A foreign or colonial subject taking refuge in the territory of a Native state from the jurisdiction of his own Government must be surrendered. Proclaimed offenders, guilty it may be of political crimes, must be given up by states which owe allegiance and have entrusted to the British Government the task of defending them. The Government of India has obtained legal power to surrender to its allies large classes of specified offenders who are not European British subjects; and although in ordinary cases it demands, whether for itself or for other Native states, the surrender of fugitive criminals so classified, it reserves to itself the right, involved in the spirit of its treaty relations, of demanding a full measure of co-operation for the suppression of crime in any direction that circumstances may require.

§ 145. The official Gazettes of India throw the fullest public light on every form of foreign juris-

Residuary jurisdiction in the states.

diction. Notifications appointing Courts and introducing laws into areas occupied by what has been termed delegated jurisdiction, constantly appear in the weekly Gazettes. On the extension of every fresh railway into foreign territory, the public are informed as to the duties and authority of the police, and the jurisdiction of the various Courts. In the case, however, of residuary jurisdiction, the great bulk of laws and regulations are published in the Agency Gazettes, and not in the British Indian Gazettes. The distinction is not without its significance. The existence of residuary jurisdiction marks a diminution of the state's sovereignty to the extent of the restriction, and the investment of that sovereignty to the same extent in the power which has imposed the restriction. The jurisdiction which the British Government exercises over British subjects, or over Native state subjects in cantonments, civil stations, and residency limits, is derived from the consent, implied or expressed, of the sovereigns; but residuary jurisdiction is either a deprivation imposed by engagement upon the Native states affected by it, or a drawback from the attributes of sovereignty which were recognised as vesting in the state on its first introduction into the protectorate. Some instances of the jurisdiction under our immediate consideration will serve to explain its origin and extent.

In the large Province of Kathiawar the Company negotiated, in 1807, some 150 engagements for fixing the tribute due by the chiefs, and relieving them from the devastation and hardship entailed by the annual invasion of their principalities by an army sent from Baroda to collect it. Some account has already been given in Chapter IV. of the acquisition

of the Peshwa's rights in 1817, and the exclusion of the Gaikwar's influence in 1820, with the result that the Company determined to treat the chiefs as "independent" sovereigns. Events, however, proved that these petty tributaries could not be trusted with independence. All of them were under the obligation of not molesting one another and of maintaining order in their territories, but very few of them were equal to the task. Robbers infested the roads, and the so-called sovereigns dare not bring them to justice. The public safety was nowhere adequately maintained. Accordingly the Government of Bombay directed the political Commissioner in 1830 to visit Kathiawar twice a year, and to try criminals whom the chiefs were too weak to punish. The two reasons assigned for such interference were the public safety, and the desire to avoid annexation or "to prevent the danger of chief by chief falling into the vortex of our ordinary rule." The Directors in due course approved the plan, and recognised the duty of taking a direct part in the administration of Kathiawar without incorporating it in British rule. In a despatch of March 3, 1858, the Directors impressed upon the Government of Bombay that the country was not to be treated as British territory, but they clearly realised that matters were going from bad to worse, owing to the division of estates and the inability of the impoverished chieftains to suppress outlawry and organised plunder. In fact more than 400 separate states were claiming to be treated as sovereignties, of whom the majority were without the means of providing any sort of public administration. The knot was cut by rearranging the chiefs into two classes, those classified as capable of exercising certain powers who were arranged in seven classes, and those

for whom the Governor-General in Council must exercise the whole of the attributes of sovereignty. The jurisdictional chiefs, numbering some 188, were graded as stated, and the extent of their criminal and civil jurisdiction precisely defined, the seventh class being given powers as petty Magistrates, but entrusted with no civil jurisdiction. The rest, consisting of unclassed estates, or chiefships extinct in all but name, were grouped under an agency official called a Thanadar, who exercised on behalf of the chiefs the jurisdiction which they were unable to use. The jurisdictional chiefs were allowed to exercise their limited powers without interference; but all cases that lay outside their defined jurisdiction were sent before the British Courts of the Agency. The ordinary residuary jurisdiction which thus devolves on the Political officers is considerable; and in the exercise of the Imperial power under which the Settlement was effected the British Government introduces laws and regulations as they are required. One of the latest enactments then notified in the official Gazette was a Limitation Law for Kathiawar. The law was not passed by the Legislative Councils of India, but introduced by the Government of Bombay in its political capacity as the highest local depositary of the Imperial sovereignty which sustains the Kathiawar subordinate sovereignties as far as they can go, and supplements their deficiencies where the public welfare demands it. The system of Government thus introduced has been described as resting upon the will of the paramount power and not on law, and the jurisdiction as political and not judicial in its character. Its effect was fully discussed in the judgment delivered by the Privy Council on December 18, 1905, in the cases of Hemchand Devchand *v.* Azam Sakarlal Chhotamlal,

and the Taluka of Kotda Sangani *v.* the State of Gondal. For present purposes it is only necessary to add that the Bombay Government in its proceedings draws its sanction from the supreme Government of India, and acts in the exercise of His Majesty's suzerainty, which is recognised by Statute 52 and 53 Vic. cap. lxiii. section 18. The chiefs can hardly be said to have delegated their authority, since it is evident that the classification of 1863 left them with, at the best, limited jurisdictional powers, and in some cases with none at all.

In other cases the residuary jurisdiction of the British Government is, to some extent, derived from the consent of the chiefs. The difficult situation caused in Kutch by the treaty of the 4th of December 1819 was expressly created "with the approbation of the Government of Kutch." With that sanction the Company engaged to guarantee by separate deeds the Jareja chiefs of the Bhayad, and generally all Rajput chiefs in Kutch and Wagur, in the full enjoyment of their possessions. When the descendants of the guarantee-holders appealed to the British Government against the encroachments of the Darbar, and complained of the deprivation of their hereditary rights, the British authorities, after consultation with His Highness the Rao, effected a Settlement whereby a special Court was instituted for the trial of cases of every kind in which a guarantee-holder is concerned, or to which a Khalsa subject is a party against a resident on a guarantee-holder's estate, or which arise between residents on different estates. In other cases, arising on the estates of guarantee-holders, a residuary jurisdiction was vested in the Court, subject to defined limitations intended to preserve the limited jurisdiction of the

guaranteed nobles. An appeal, subject again to limitations, was reserved from the decisions of the guarantee-holders to the Court, and an appeal from all decisions of the Court lies to His Highness the Rao with a further appeal to Government. In the case also of boundary disputes a right of appeal to the British Government was reserved.

A similar instance of residuary jurisdiction asserted by the British Government over a particular class of persons, subject to the sovereignty of a ruler in subordinate alliance with His Majesty, is furnished by the treaty of the 20th of October 1862, concluded with the Raja of Kolhapur. This treaty provides "that all criminal cases within the jurisdiction of these Sirdars, involving death or imprisonment beyond seven years, should be forwarded for trial before the Political agent for submission to Government." Thus, the Court of the Political agent of Kolhapur is vested with jurisdiction to try such cases; and although the Government of India cannot by its statutory legislative authority sanction this exercise of jurisdiction over persons who are not subjects of His Majesty, yet indirectly the law of India recognises and supports the proceedings of the Political agent. For, whenever it is necessary to incarcerate in a British jail the foreign offenders sentenced by that officer, the Indian Prisoners Act permits their reception in a British prison, and they can be deported thence to a penal settlement if they have been sentenced to transportation. It is unnecessary to add to these examples of residuary jurisdiction. The two lessons which seem to be suggested by the review just given are, the evidence which they afford of the extent to which sovereignty is divisible in India; and the care taken by the British

Government to exercise its political jurisdiction with due regard to its general pledge, that it will not introduce the regular British jurisdiction, or allow its ordinary Courts to extend their jural authority into the Native states.

Substituted jurisdiction.

§ 146. There remains a further class of jurisdiction, British only in a special sense, which differs entirely from either of the categories previously described. Delegated jurisdiction, if not permanently acquired by the Government of India, is at any rate needed so long as the occupation of the locality continues. Residuary jurisdiction must continue until circumstances alter, and until the judicial systems of the King's allies are organised on a basis altogether different from that which now exists. Then the special protection of certain classes from injustice would become unnecessary. But when the British authorities depose a Native ruler for gross misgovernment, or exercise the royal prerogative of guardianship of a minor chief, the intervention is avowedly temporary and rests entirely on an act of state. The objects in view are seldom alike in two cases together. In a well-managed state the accident of a minority creates but little disturbance. The Native state machinery is kept at work under adequate supervision, and the introduction of British measures, alien to the spirit of the indigenous Government, is carefully avoided. The British Government is responsible, and exercises, rather than introduces, jurisdiction for the time being; but that responsibility involves nothing more than the administration of the country under its own laws and by its own state officials. On the other hand, when a ruler is deposed for long-continued and gross misrule, or where the death of a chief entails the management of a principality ill

equipped with Courts and destitute of definite laws, the task is more onerous. A study of the official Gazettes shows that, at one time, the introduction of laws and the establishment of Courts in states thus brought under temporary control in Western India, were notified in the British official Gazettes. In recent years this practice has properly been discontinued, and the form in which such orders are now issued serves to distinguish substituted from residuary jurisdiction. When, for instance, a law was introduced into Sawantwari, whose ruler was not entrusted with power, the fact was thus notified in the Agency Gazette: "The Political agent, on behalf of the Government of the state of Sawantwari, and with the sanction of the British Government, introduces" the law as then published. In contrast with this, where laws are introduced into a civil station, or a Thana[1] circle, in foreign territory, in the exercise of delegated or residuary jurisdiction, the Notification refers to the Foreign Jurisdiction Act, and cites the authority of the Governor-General in Council, or of the local Government. In short, where British jurisdiction replaces that of a Native chief for any of the reasons just assigned, it is not only a temporary invasion, but an invasion of British power rather than of British jurisdiction. Sometimes where the state is petty, and a neighbouring official holds Court in a British District, he is entrusted with jurisdiction over the state. But it is made clear that the jurisdiction is given not to his Court as such, but to the officer who presides for the time being over that Court, and not by the general law, but by the special authority of the Executive Government. The general principle is laid down that whatever law is administered or

[1] For explanation of the Thana system see Sections 15 and 145 above.

introduced into a state under temporary administration will be the law of the state. If the phrase "British jurisdiction" is applied to what is here termed substituted jurisdiction, it must be understood that it is British only in the sense that the British Government and its officers are charged with the temporary administration of the law and the management of the state.

Concluding remarks.

§ 147. The whole subject of foreign jurisdiction is one of tedious complexity but of supreme importance to the integrity of the Native states. Situated as many states are in the heart of British districts, intersecting every line of railway, and sometimes representing the wreckage of principalities once well equipped but now disintegrated by rules of equal inheritance, they are preserved from serious conflict with the British system only by the surrender of some of their attributes of sovereignty. To permit the introduction of the British judicial system into them would be a certain step to annexation. British laws and British Courts have no discretion and know nothing of policy. They are based on a system of administration which differs materially from that of India under its own princes. The law must be administered and interpreted in accordance with its terms and with the decisions of the highest tribunals. If then the British Government must interfere for the security of British subjects, of protected persons, or Imperial interests, it wisely entrusts its interference to officers whose actions can be regulated by a studious regard for the rights and privileges of the states, and for the solemn guarantees given by the British nation. The care taken by the Government of India to avoid the Roman system of prefectures, or the task of organising one Imperial judicial

system for the whole Empire, illustrates its constant endeavour to respect the cherished rights of the subordinate states whilst it mantains its own. The various circumstances of the numerous principalities require separate treatment for each one of them, but one and all have been promised protection, and there is no department of political control more likely to lead to dangerous interference than that of foreign jurisdiction. If any one consults the official Gazettes of the Indian Government he will find many scores of pages devoted annually to the judicial notifications published by the political officers of the Empire. British law flows into the Native states through many channels, and it is essential to keep the influx under proper control. For this reason an attempt has been made in this chapter to discriminate between the various classes of foreign jurisdiction, and to show that undue encroachment upon the internal sovereignties of the protected princes is carefully avoided.

CHAPTER XIII

THE TIE WHICH UNITES

Brief retrospect at the position of the Native states.

§ 148. Any one who has followed the course of inquiry thus far will be in a position to form his own opinion as to the propriety of the various terms which are most commonly applied to the rulers of the Native states of India. Before, however, their claims to an international, a quasi-international, a feudatory, or a constitutional position are examined, a short retrospect at their privileges and duties will be convenient. In the teeth of difficulties arising from their past history, their geographical and constitutional environment, the personal character of some of them, and the conflicting interests or encroachment of a stronger power exercising dominion in their midst, all who are fit to govern have preserved not only their proprietary rights but most of the attributes of internal sovereignty. Nearly seven hundred states remain outside the territories known as British India. The treaties and engagements which bind them to the supreme Government of the Empire have been forged at various times, and under the heavy blows of shattering policies directed by a stronger organisation. Admitted first to equal alliances extended to a favoured few, the foremost privileged princes found the weight of international obligations almost too heavy for them

to bear. In course of time they witnessed and felt the extension of British ascendancy and the spread of the protectorate, and one and all surrendered their rights of war and negotiation. From a condition of subordinate isolation the allied and protected states were raised to a position of partners and were finally united to the British Government. They were secured against annexation at the cost of a fresh liability to improve their internal administration, and the Queen of Great Britain and Ireland in conveying to them Her Majesty's assurance that the representation and dignity of their Houses should be continued, expressed her reliance on their loyalty to the Crown, and their faithfulness to the conditions of the treaties, grants, or engagements which record their obligations to the British Government. The whole family of country princes and chiefs have thus passed through three phases of policy, and felt the shock of three historical changes—the removal of Imperial authority from Delhi, the resignation of his sovereignty by the Peshwa, and the determination of its trust by the Company in favour of the Crown. All alike are guaranteed protection, despite the fact that it was purchased at a great price by a few favoured chiefs in the earlier days of their contact with the Company, that it was refused for a long time to others who applied for it, and that it was never conceded by treaty to some whose relations with the British rest upon usage.

The obligations to the British Government, to which Lord Canning's Sanads called such pointed attention, are the price which the states pay for protection, and for the rights which they derive therefrom. Their duties are liable to be reinforced from the exercise of the royal prerogative, from the action

of Parliament within the limits which its solemn guarantees impose upon it, from the law of natural justice, from fresh agreements, and from usage which is ever active to adapt the letter of engagements to their spirit under altered circumstances. Under such conditions an exact account of rights and obligations cannot be struck. Nevertheless, the main heads of the bill are sufficiently distinct. The states have entrusted to the paramount power the duty of providing for the common defence, and of directing their external relations. In time of war they must co-operate to the full extent of their resources, and in time of peace they must grant to the Imperial army such assistance as it requires, and must regulate the strength and equipment of their own forces so as to avoid embarrassment to their neighbours and danger to the peace of their own territories. They must enable the supreme Government to maintain its communications between the military stations and posts occupied by its forces, and to avoid dangerous interruptions or break of jurisdictional gauge in the Imperial system of railways and telegraphs. Inasmuch as the Government of India acts for them in all international and interstatal arrangements, they must loyally carry out the obligations incurred to foreign powers or other states on their behalf. The perpetuation of their Governments is incompatible with the dismemberment of their states, internal disorder, or gross misrule. They must therefore accept Imperial intervention to prevent or correct such abuses. The laws of natural justice and the principle of religious toleration must be observed. The right of self-preservation, with its incidental rights, gives to the British Government an indefinable right to protect Imperial interests where they may be injured by the unfriendly action of

the King's allies: and it suggests a possible right of intervention in their internal affairs, as in the regulation of currency, or commerce, or in the establishment of postal union. Each case of interference must, however, be justified by real necessity. Claiming as they do the protection of the King-Emperor, the Indian sovereigns must seek the confirmation of the Viceroy to their successions, must treat with respect the representatives of Imperial authority, accept the guidance of the supreme Government during minorities, and generally prove their loyalty to the Crown. Parliament and the Legislatures of India have on their part recognised the fact that, except in the case of British subjects or servants, British legislative and judicial authority cannot extend beyond the territorial limits of India under the King. The judicial or legislative functions with which the British Government is invested in the Native states must therefore be based on a full recognition of the fact that they are exercised on foreign territory. If the duties of the protected princes are extensive, the limitations upon the interference of the British Government are strict.

Loose generalisations avoided in Indian treaties.

§ 149. It can readily be understood that amidst the shifting scenes through which British intercourse has passed to its final goal, and with so large a body of states of various sizes and in various positions within and beyond the advancing line of British dominion, some features and incidents of an International, a feudatory, or a constitutional position here and there lend colour to different theories. But no uniform or consistent practice has been observed by the paramount power in describing the states as a whole. On the contrary, different language has been used in despatches and in treaties at different periods.

and even in the same period one ruler has been distinguished from another, each case being treated on its own merits. We can trace to their sources some at least of the imperfect generalisations which different writers have attached to the whole group. To the present day the state of Nepal preserves a large measure of independence so far as the British Government is concerned. In 1854 it even waged war and in 1856 concluded a treaty with Tibet without the intervention of the British Government. Since then it has been the scene of revolutions and disturbances with which the Government of India had no concern. Its foreign affairs are, as in the case of Afghanistan, under British control. It is, however, unnecessary to enter into further particulars, since Nepal has been excluded from the scope of this work. It is sufficient to mention the state as illustrating a semi-international position of considerable independence. And such was the position which the most important of the Indian states, especially Mysore and Hyderabad occupied when they first entered into negotiations with the Company's officers. The phrase "independent" was then used in official documents to describe their chiefs, and even up to the outbreak of the Sikh war in 1845 the ruler of the Punjab maintained so called international relations with the Indian Government. When the war ended, the obligation was imposed on the Lahore state of recognising the "independent sovereignty" of the Maharaja of Jammu, to whom Kashmir was given by the Company as an "independent" possession. These and other instances have been cited by those who would call the rulers of the Native states independent.

Others have preferred to adopt the phrase feudatory, and later advocates of the feudal theory find in Rajpu-

tana, in the Punjab, and in the petty Jagirs scattered over the Empire, much that reminds them of the feudal system. How far any real similarity, whether in origin or tendencies, exists is a matter for subsequent discussion. Here it may be admitted that the phrase is used in many parts of Sir Charles Aitchison's comments upon the treaties. But where it is so applied the treaties themselves hardly warrant the application. For instance, the chiefs subordinate to Kolhapur were described in his review as feudatories, but the Treaty of the 20th of October 1862 calls them "higher Sirdars" in article 7, and in the next article "higher Jagirdars," and "Sirdars," and it recognises the "seignorial rights of the Raja." The *seigneurs* and *droits seigneuriaux* were no doubt present to the mind of Mr. Havelock, who drafted the treaty, but too much stress must not be laid on a chance word. The obligations of Cheit Singh are also described as feudal, but the engagements with Benares do not make even a remote reference to feudal relations. On the whole, it seems to me that the expression is almost studiously avoided in the text of the agreements concluded before 1857. We might have expected to find the term applied to the Cis-Sutlej chiefs in the treaties with Ranjit Singh, but it is not used. It is only to be found in the Sanads or patents given to the chiefs of the Central Provinces or Nagpore. The fifteen chiefs to whom adoption Sanads were granted in 1865, as Karond and Khairagarh, executed an agreement which commenced as follows": I am a Chieftain, under the administration of the Chief Commissioner of the Central Provinces. I have now been recognised by the British Government as a feudatory, subject to the political control of the Chief Commissioner." Accordingly the

expression is reproduced in the Notification of the Foreign Office, No. 1237 I, of the 13th of April 1893.

There are again others who claim authority for the adoption of the phrase nobles of the Empire, and such advocates of the constitutional theory may find in the position of the Raja of Mudhol and in that of Pudukkottai in Madras germs of an idea that the chiefs were rather nobles of the British dominion than sovereigns of petty states. But traces of this inferior position are very rare, and it is clear that the uniform tendency of British administration has been to exalt the status of the Indian chiefs and to keep their territories outside the grasp of British law, rather than to assign them a noble position as the aristocracy of British India. A careful study of the Indian treaties seems to point to the deliberate avoidance of any general term for classifying the Company's allies, and when feudatory is used in a proclamation the words run—"Princes, and feudatories."

The tie is not international.

§ 150. If International law deals only with nations or states whose intercourse with each other is based upon the theory that they are equal powers and have the right to form alliances and declare war, then the Native states of India cannot claim an international position. The restrictions placed upon their independent action, and the obligations which habitually govern their external relations, and even to some extent their exercise of internal sovereignty, must be held to have deprived them of real international life. This view, based upon the considerations which have been set forth in previous chapters of this work, is confirmed alike by the explicit declaration of the British Government and the opinions of eminent writers on International law. There is nothing uncertain in the tones of the Notification published

by the Government of India in its official Gazette, No. 1700 E, dated the 21st of August 1891: "The principles of international law have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native states under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter." The testimony of text writers of acknowledged authority is hardly less emphatic. Twiss has already been quoted in favour of the view that the states are "protected dependent states." Sir Edward Creasy, in his *First Platform of International Law*, section 97, deals with the proposition that titular independence is no sovereignty if coupled with actual subjection. "Such," he observes, "is the condition of the Native princes of India. We all see clearly in them and in their subjects not independent political communities, which are sovereign states in the eye of International law, but mere subordinate members of the larger and Paramount political society, the true sovereign state, the British Empire." On the other hand, in his *Commentaries upon International Law* (Third Edition), section 29, Sir Robert Phillimore lays emphasis upon the principles of international justice, which "do govern, and ought to govern," the dealings of the Christian with non-Christian communities. "They," he writes, "are binding, for instance, upon Great Britain in her intercourse with the Native powers of India; upon France with those of Africa; upon Russia in her dealings with Persia; upon the United States of North America in their intercourse with the Native Indians." In a footnote he refers to the fact that Haidar Ali was invited by France and England to

accede to the Treaty by which the *status quo ante bellum* was established in India. Upon this it may be observed that when the policy of the ring-fence was being pursued in India the principles and even the precise language of International law were generally and properly applied to the Indian states. Haidar Ali was in August 1770, and even at a much later date, independent, and he exercised full rights of war and of diplomatic action. His son sent an embassy to the French. But the condition of the Indian states has been entirely altered since the close of last century. No one will deny that what Sir Robert calls the "precepts of Natural law" are obligatory both on the states and on the British Government, or that the latter is bound to govern its intercourse with the states by the "principles of justice," whether moral, international, or of any other category. Perhaps Sir Robert means no more than that, as he shows in section 75, where "the capacity of the state to negotiate, to make peace or war with other states irrespectively of the will of its Protector," is made the test of its International existence.

Woolsey, in his *Introduction to the Study of International Law*, is uncompromising in his rejection of such a condition. In section 37 he writes: "For the purposes of International law that state only can be regarded as sovereign which has retained its power to enter into all relations with foreign states, whatever limitations it may impose on itself in other respects." Halleck (Sir Sherstone Baker's Edition, 1878, chapter iii., page 61) goes even further: "No doubt one state may place itself under the protection of another without losing its international existence as a sovereign state, if it retains its capacity to treat, to contract alliances, to make peace and war, and to

exercise the essential rights of sovereignty. But these rights must be retained *de facto* as well as *de jure*." M. Charles Calvo considers that if a state "abandonne ses droits de négocier et de conclure des traités et perd ses attribus essentiels d'indépendance, il ne peut plus être regardé comme un état souverain, comme un membre de la grand famille des nations." He classes the Indian states with Siberia as outside the range of International law, and as protected dependent states. Manning, in his *Commentaries* (book iii. chapter i., edited by Sheldon Amos), finds fault with the "affected classification of states according to the alleged gradations and modes of their sovereignty," and is obliged to insist on the doctrine that every "state" is, for all purposes of political intercourse, to be treated as the equal of other states. He will not even admit that "some of the Indian states" are instances of semi-sovereign states. It is unnecessary to ransack any farther the libraries of International law, for if it is conceded that International law can only apply strictly to states which may form alliances and declare war on other states, then the Native states must lie beyond the scope of a treatise upon International law.

§ 151. The application to them of the term feudatory is much more general, and the arguments for so describing them have been cleverly discussed at considerable length by Sir Lewis Tupper in *Our Indian Protectorate; or, an Introduction to the Study of the Relations between the British Government and its Indian Feudatories*. Sir Lewis has said all that can be advanced in favour of the term. There are, no doubt, several coincidences in the circumstances of all societies of men, and in their attempts to adapt themselves to their environments, at different periods, **The tie is not feudal.**

and in different parts of the globe. Self-preservation is a law of human nature, and in periods of constant civil war and of the sack of cities, the soil possesses, all the world over a value which no movable property can at such times command. The Indian people of necessity grouped themselves in parties round a territorial chief who could protect them. Their swords continued to be as necessary to them as their ploughshares, and the chief himself, who for the sake of policy and protection rendered military service and allegiance to a superior prince, exacted similar dues in turn from his vassals. Parallels to the *droits seigneuriaux*, to *fiefs*, to the *comitatus*, and other incidents of feudalism, can readily be traced in Indian history, although the broad currents of their development took entirely different directions in the East and in the West. The Sarinjamdars of the Deccan, the Jagirdars in most parts of British India, and the Zamindars of Bengal suggest many analogies to feudal lords; and, with a difference, some few of the petty chiefs ruling small Native states in the presidency of Bombay are not unlike them. But it is this superficial resemblance, confined to a very few of the petty chiefs, which makes the employment of the phrase feudatory so dangerous to the rights of the great bulk of the protected princes of India. Sir Lewis Tupper is led on by his argument to make little of the gulf which separates the Jagirdar subject to British law from the treaty Jagirdar ruling in Jath or Sangli and making his own laws for his subjects. In the end he arrives at the conclusion that the position of the Native states is constitutional. He evades the main issue, whether Parliament is competent to pass territorial laws for the Native states, on these grounds (p. 353), that if it were necessary to legislate,

"the constitutional course would be to induce the chief to introduce the laws on his own authority." But what if the semi-sovereign chief will not be induced? In that case, as he argues, "the political supremacy of Parliament is undoubted. The states are subordinate to the Government of India; and that Government is both created by Parliament and responsible to it." His inference seems to be that Parliament may do what it pleases with the states, although it has no power to legislate for places and persons not under British jurisdiction. He even argues that "from the point of view of the duty of good government, native rulers may be regarded as the agents or great hereditary officers of the British Empire at large for the administration of part of its varied possessions." If Sir Lewis Tupper's arguments are to be taken seriously, they would warrant the conclusion that the Native states being feudatories are British "possessions," and this would assuredly nullify the solemn assurances given to their rulers.

The tie is not a constitutional tie.

§ 152. This leads us directly to the main issue, whether the connexion between the King's authorities in India and his protected allies or the rulers of the Native states is a constitutional tie. Those who adopt that view can doubtless point to certain arrangements which suggest such a statement. In particular the great settlements made by Lord Hastings are cited as being of a constitutional character. It has been shown in a previous chapter that the jurisdictions of the numerous princes in Kathiawar were defined, certain laws applied, and a framework of Government introduced. In the history of the English constitution a process of evolution can be traced from treaties, negotiated between orders or

estates, to a legislative union. The Magna Carta, although in form a Charter, or in Indian phraseology a Sanad, is in substance a Treaty or agreement between the King of England and his Barons. So late as the reign of Edward II., the doctrine prevailed that a Parliamentary grant bound only the parties who had assented to it, just as the determination of the Witan bound merely those who were present and concurred in the proposition. The Congress meetings of the Anglo-Saxon Empire originated in the facility they offered to the Sovereign for entering into a general compact with his vassals, which otherwise would have required the "counsel and consent" of parties to several Treaties. The position of King and nobles in early English history thus presents some incidents common to that of the Supreme Sovereign in India in relation to the country princes. In the case of the Tributary Mahals of Orissa the tie is more or less of a constitutional character. Such powers as the chiefs exercise they owe to British policy, although the country has been declared to lie beyond British India. Even in the case of the more important Indian sovereigns, it is claimed for Lord Lytton that he correctly expressed the position of certain leading Princes when he conferred upon them the title of "Counsellors of the Empress." Any one who is acquainted with Stubbs's *Select Charters* knows how the English constitution was the resultant of forces that can be traced back to Teutonic origin, how each concession supported a programme of new claims which were made good by later struggles, and how, in short, the institutions of to-day grew out of the past. The political organisation of India under Native Rule may, it is argued by those whose

arguments have been thus summarised, in time be modified similarly, and proceed in the direction of a constitutional union with India under the King.

The strongest advocate of the constitutional tie is Professor John Westlake, who has discussed the point in his chapters on the *Principles of International Law*, a subject on which he is undoubtedly an eminent authority. "The Native princes who acknowledge the imperial majesty of the United Kingdom have no International existence, to International law a state is sovereign which demeans itself as independent"; and if no foreign relations are allowed it, Mr. Westlake will not permit it to be called even semi-sovereign, for "a state is semi-sovereign to the extent of the foreign relations which the degree of its practical dependence allows it." He goes on to argue that, since the British power alone represents to the outside world the unit India, the political relations possessing any degree of fixity which exist between the component parts of the unit are constitutional. The position of a Native state "appears to be that of a separate part of the dominions of the King-Emperor, as New South Wales and British India are other such separate parts." Reviewing the intrusion of foreign jurisdiction into the states, Mr. Westlake argues that their position has been imperceptibly shifted from an International to an Imperial basis, although the process has been veiled by the prudence of statesmen, the conservatism of lawyers, and the prevalence of certain theories about sovereignty. He makes little of Treaties, since "no human arrangements can escape from decay: in all states the legislative power sets aside the obligations of contracts"; and he offers this consolation to the chiefs who cherish such docu-

ments as sacred: "in truth the Treaties and grants themselves are safer under a constitutional system than under an International one." "The princes and people of the Native Indian states may reflect that England relies on precedent and constitutional tact for her own liberty and good government." Elsewhere, the writer, from whom these quotations are made, insists upon the importance of avoiding loose and inaccurate references to International law, and he puts the case in these words: "We may either say that we have set up a state of chiefs in India to which International law has no application, as was done in the Notification of the Government of India, No. 1700 E, 21st of August 1891, and then we observe our law-abiding character in the quarters of the world to which we admit that International law applies; or, we may keep up the pretence that International law applies within India, and then it will be hopeless to deny that we are breakers of it."

The force of this reasoning is obvious, and it has already been admitted that the tie is not strictly international. But is there no shelter for the Native states under the shadow of International law? Is it not possible to conceive of a sovereignty which, if wanting completeness in every respect, may yet be a sure defence against annexation? Sir Henry Maine certainly thought that the Native states might find shelter there. His words may be quoted: "Sovereignty is a term which in International law indicates a well-ascertained assemblage of separate powers and privileges. The rights which form part of the aggregate are specifically named by the publicists, who distinguish them as the right to make war or peace, the right to administer civil and criminal

justice, the right to legislate, and so forth. A sovereign who possesses the whole of these is called an independent sovereign, but there is not, nor has there ever been, in International laws, anything to prevent some of these rights being lodged with one possessor and some another." Elsewhere, as quoted with evident approval by Sir Courtenay Ilbert, Sir Henry Maine puts his finger on the chief test of sovereignty which even the petty states of Kathiawar enjoy: "These principles would justify any amount of interposition, so long as we interpose in good faith for the advantage of the chiefs and people, and so long as we do not disturb the only unqualified sovereign right which the Kathiawar states appear to possess—the right to immunity from foreign laws."

Plea for the term semi-sovereign states.

§ 153. In the course of this work the states have been described as sovereignties, and the expression must be read with the context. For it has been shown that very many of the attributes of sovereignty have been exercised for the ruling chiefs by the protecting power. The British Government has drawn to itself the exercise of the entire external sovereignty of the Native states, and it has also gathered into its own hands some of the internal sovereignty of even important states, leaving to petty chiefs, as in Kathiawar, merely shreds of internal sovereignty. The Indian states have been treated in this book as semi-sovereignties, or types of limited sovereignty. International law to-day recognises that "to a limited extent it may govern the relations of certain communities of an analogous character with independent states" (Hall, 4th Edition, p. 183), and in the days gone by, when its exponents had no knowledge of modern protectorates or spheres

of interest, it was not so uncompromising as either Austin or Mr. Westlake would wish us to believe. They accommodated their phrases to the facts before them, and Kluber described the United States of the Ionian Islands as perfect specimens of semi-sovereign states. No doubt the analogy between the Native states and the Ionian Islands is not quite complete, but it was close enough to justify Maine in unwinding the ball of ideas represented by sovereignty, and claiming the shelter of International law for the union of the semi-sovereign states of India with the British Government. For this reason a brief account of the arrangement sanctioned by the European powers may be given.

By the Convention signed at Paris on the 5th of November 1815, it was provided that the Ionian Islands should form "a single, free, and independent state under the denomination of the United States of the Ionian Islands." By article ii. the state was placed "under the immediate and exclusive protection" of the King of Great Britain and Ireland. By the next article the appointment of a Lord High Commissioner was provided for, to enable the King "to employ a particular solicitude with regard to the legislation and the general administration of those states." The next article dealt with the preparation of a new Constitutional Charter. By article v. the "rights inherent in the said protection" were explained as giving His Britannic Majesty "the right to occupy the fortresses and places of those states, and to maintain garrisons in the same. The military force of the said United States shall also be under the orders of the Commander-in-Chief of the troops of His Majesty." The next article dealt with the payment of the British garrison by the Government of

the United States. Article vii. introduced an element of contrast: "The trading flag of the United States of the Ionian Islands shall be acknowledged by all the Contracting Parties as the flag of a free and independent state." The colours were then described, and the article proceeded: "None but commercial agents or Consuls, charged solely with the carrying on commercial relations, and subject to the regulations to which commercial agents or Consuls are subject in their independent states, shall be accredited to the United States of the Ionian Islands." The Constitutional Charter amplified the article just quoted by forbidding subjects of the United States of the Ionian Islands from acting as Consuls or Vice-Consuls of Foreign powers. British consular protection was assured to the subjects of the states in all ports. Rules were laid down for the approval of the appointments of all foreign agents and Consuls. Vessels sailing under the Ionian flag were to carry the pass of the Lord High Commissioner, while other sections dealt with the national colours and the Naturalisation of foreign subjects. It may be admitted that although the sovereign attribute of free and uncontrolled agency in external relations was wanting to the Ionian states, still there was a spark of diplomatic life left to them in the reception of commercial agents. But in all other respects, such as their deprivation of rights of war, their exclusive protection by Great Britain, and the particular solicitude over their administration with which the British power was entrusted, they present a very marked parallel to the relations which in the present day subsist between the Government of India and the dependent protected states. The precision of modern writers and jurists would not

perhaps have tolerated the insertion in the Convention of the phrase independent, but there are many who still do not hesitate to describe the Ionian Islands, under the Convention of 1815, as semi-sovereignties.

The importance of maintaining past policy.

§ 154. But there is a stronger justification for the adoption of the term semi-sovereignties than that which is afforded by mere arguments drawn from the use, or abuse, of the sacred phrases of International law by jurists or statesmen. Violence must be done to history, diplomatic engagements, legislative enactments, legal decisions, and long-established usage, if we are to discard ideas of suzerainty or sovereignty as inapplicable to the Native states of India, and incompatible with the future development of the Indian Empire. The history traced in these pages proves what Mr. Westlake is ready to admit that the Company dealt with the leading rulers of India in times past on equal terms as independent sovereigns. It is something gained to start from an International basis, and it has been shown that the attributes of sovereignty with which the Company's allies parted were conceded by themselves sometimes by treaty and sometimes by consent. In the King-Emperor's dealings with Foreign states there is no concealment of the fact that the rulers of Native states possess a large measure of internal sovereignty. Commercial and extradition treaties with Foreign Powers reserve such rights, and when their provisions are made applicable to the Native states, the following words are used: "including the territories of any Native prince or chief in India under the suzerainty of the British Government." When, again, arrangements are made with an Indian prince for jurisdiction over railways or tracts of country the language used is unequivocal. The lease

of Berar given by the Nizam of Hyderabad, dated November 5, 1902, recites that: "His Highness the Nizam, whose sovereignty over the assigned districts is reaffirmed, leases them." When Mysore was restored in 1881 the island of Seringapatam, which having previously become part of British India had been leased since 1811 to Mysore, was thus referred to: "From the date of the Maharaja's taking possession of the territories of Mysore the British sovereignty in this island of Seringapatam shall cease and determine, and the said island shall become part of the said territories, and be held by the Maharaja upon the same conditions as those subject to which he holds the rest of the said territories." Thus the language of Indian treaties as well as that of British treaties with European powers boldly affirms the sovereign rights of the Native states.

The voice of British Legislatures and British judges is equally clear. Parliament in the Interpretation Act, 1889, § 18 (5) defines India "as British India together with territories of any Native prince or chief under the suzerainty of Her Majesty, exercised through the Governor-General of India or other officer subordinate to the Governor-General of India." Several Acts passed by the Indian Legislature apply to subjects of His Majesty "within the dominions of princes and states in India in alliance with Her Majesty," such as those dealing with the Income Tax (act ii., 1886), the Native Passengers Act (x., 1887), the Official Secrets Act (xv., 1889), and Indian Railways Act (ix., 1890). In the Pilgrims' Ships Act (xiv., 1895), the General Clauses Act (x. of 1897), and the leading Codes of procedure, the expression used is "any Native prince or state under the suzerainty of Her Majesty."

The imperial Courts of Appeal give no countenance to the theory that no "sovereignty" is left to the Native states. In the case of Saiyad M. Yusuf-ud-din (I.A. vol. 24, p. 145) the Lord Chancellor on behalf of the Privy Council pointed out that the sovereignty derived from the Nizam on a particular line of railway did not justify the arrest complained of. "The authority, therefore, to execute any criminal process must be derived in some way or another from the sovereign of that territory." He continued, "as the stream can rise no higher than its source, the Notification of the Government of India can only give authority to the extent to which the sovereign of the territory, the Nizam, has permitted the British Government to make that Notification." And most significant was the Report of the Privy Council in 1902 in the Matabeleland case. "The situation is one very familiar to Indian lawyers and administrators. For in India there are hundreds of states in which the East India Company, during its rule, and afterwards the Crown, has acquired large powers of administration. . . . And yet, unless there has been cession of territory, the least independent of such states is for some important purposes a foreign state, its subjects are not British subjects, the laws passed by the Indian Legislature do not affect them, and it is subject to such rules as have been duly made in accordance with the jurisdiction acquired over it."

How far continuous usage has affirmed the possession of attributes of semi-sovereignty by the Native states must be gathered from the pages of this book, and the discussion may be concluded with a plea for adherence to a policy which has preserved the integrity and secured the loyal co-operation of nearly

seven hundred princes and chiefs. Any removal of a check against encroachment and interference could not fail to excite the resentment and alarms of the King's allies. A habit of mind or language, which should encourage the belief that the Native rulers are merely delegates and agents of the British Government, and not entitled in their own right to exercise authority over their subjects within the limitations which have been described, would not only retard progress, but excite opposition to reform. Sound policy no less than good faith is on the side of the legal authorities who treat the Native princes as possessed of varying degrees of internal sovereignty dependent upon the British Government. It cannot be denied that the shelter of International conceptions and rules protects a weak state from dangers to which a constitutional tie would expose it. In daily intercourse with the neighbouring states which occupy so large a space in India, the British administration must constantly ask for co-operation, sometimes even for the cession of rights. Human nature everywhere is more prone to grant what is asked for as a reasonable favour than demanded as a right. The responsibilities of the British rulers of India are large enough without making unnecessary demands on the hereditary rulers of Native states. Since public opinion is apt to be impatient in its demand for reforms, it is expedient that it should realise the solemn promises embodied in Lord Canning's Sanads and in Queen Victoria's gracious proclamation, and the restrictions imposed upon it by the public acts of the British Nation. It is only by such means that the good faith of Great Britain can be maintained, and the vision realised, which Tennyson beautifully expressed in "Akbar's Dream"—

Me too the black-wing'd Azrael overcame,
But Death had ears and eyes; I watch'd my son,
And those that follow'd, loosen, stone from stone,
All my fair work; and from the ruin arose
The shriek and curse of trampled millions, even
As in the time before; but while I groan'd,
From out the sunset pour'd an alien race,
Who fitted stone to stone again, and Truth,
Peace, Love and Justice came and dwelt therein.

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